

REPORT

of the

ATTORNEY GENERAL

of the

STATE OF FLORIDA

FROM JANUARY 1, 1933, TO DECEMBER 31, 1934

CARY D. LANDIS
ATTORNEY GENERAL



Tallahassee, Fla.

1934

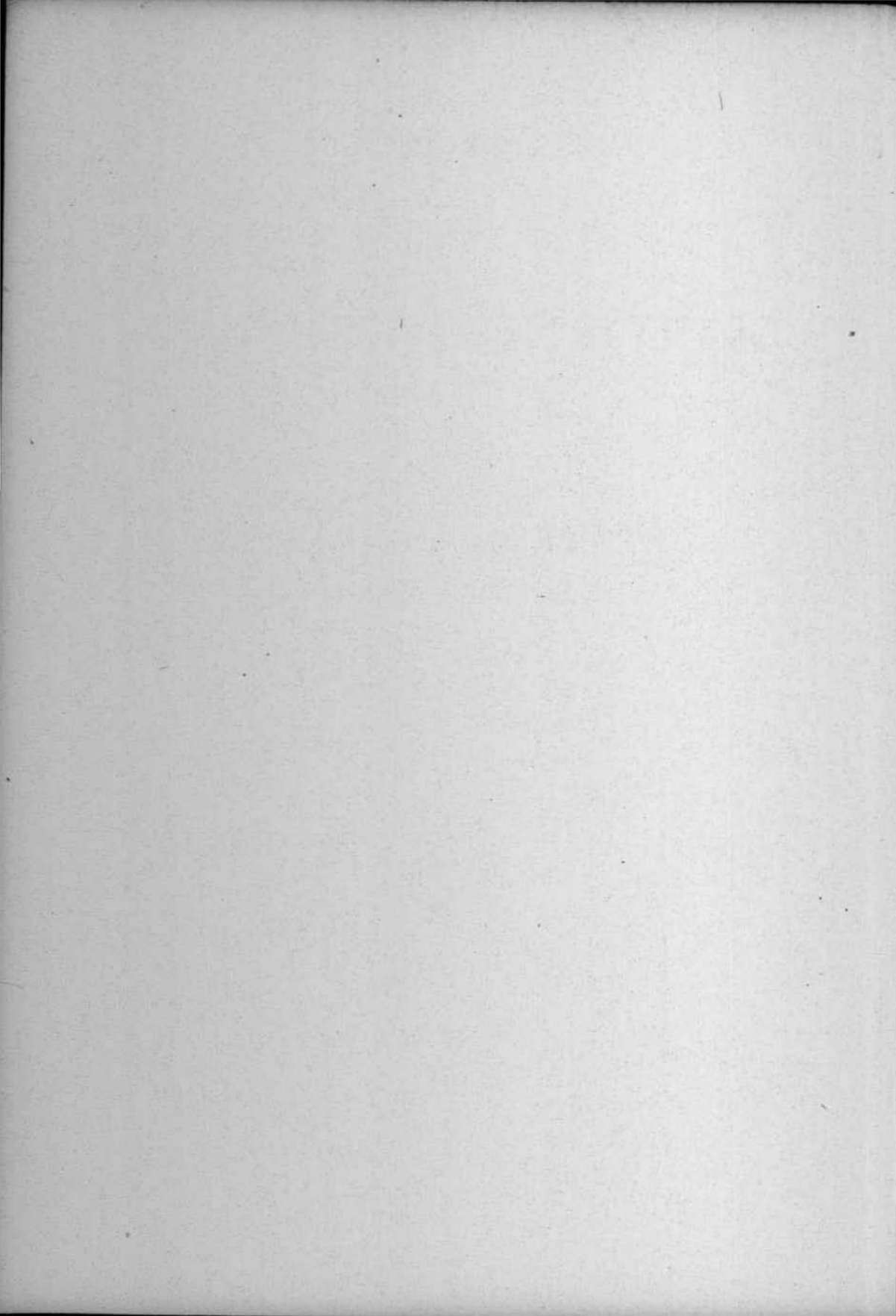


TABLE OF CONTENTS

PART 1

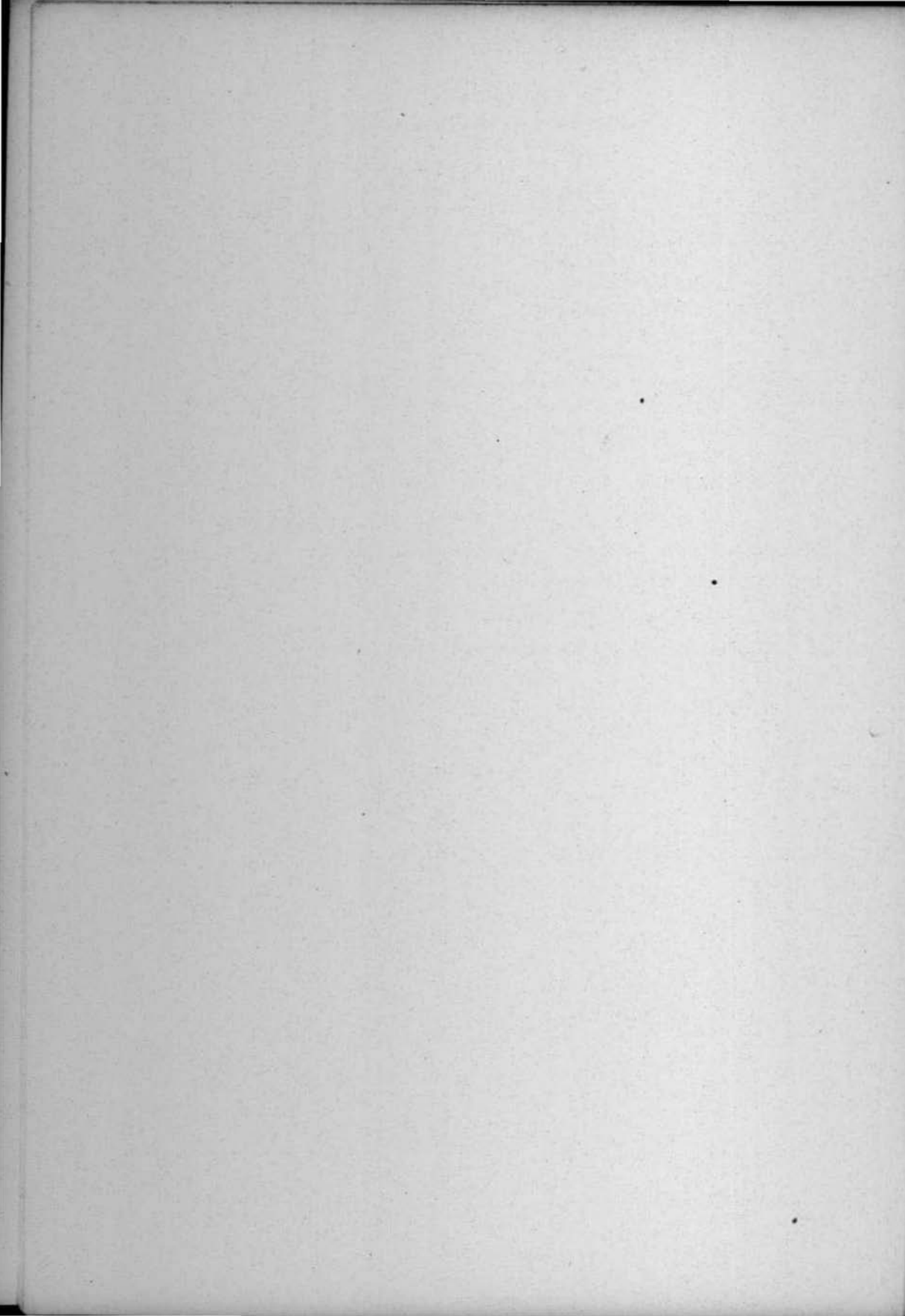
	Page
I. STATE LAW DEPARTMENT	7
II. FORMER ATTORNEYS GENERAL OF FLORIDA	7
III. FORMER ASSISTANT ATTORNEYS GENERAL	8
IV. JUDICIAL DEPARTMENT OF FLORIDA	8
Justices of the Supreme Court	8
Clerk Supreme Court	8
Attorney General	8
Attorney for Railroad Commission	8
Attorney for State Road Department	8
Judges Circuit Court	9
Judge of the Court of Record	9
Judges of the Criminal Court of Record	9
Judge of the Court of Crimes	10
Judges of the Civil Court of Record	10
State Attorneys	10
County Solicitors	11
Clerks Circuit Court	12
County Judges	12
V. COUNTIES, COUNTY SEATS AND COUNTY OFFICERS	12
VI. CIRCUIT COURT CALENDAR	14
First Circuit	14
Second Circuit	14
Third Circuit	15
Fourth Circuit	15
Fifth Circuit	16
Sixth Circuit	16
Seventh Circuit	16
Eighth Circuit	16
Ninth Circuit	17
Tenth Circuit	17
Eleventh Circuit	17

TABLE OF CONTENTS (Continued)

	Page
Twelfth Circuit	18
Thirteenth Circuit	18
Fourteenth Circuit	18
Fifteenth Circuit	19
Sixteenth Circuit	19
Seventeenth Circuit	19
Eighteenth Circuit	19
Nineteenth Circuit	20
Twentieth Circuit	20
Twenty-First Circuit	20
Twenty-Second Circuit	20
Twenty-Third Circuit	21
Twenty-Fourth Circuit	21
Twenty-Fifth Circuit	21
Twenty-Sixth Circuit	22
Twenty-Seventh Circuit	22
Twenty-Eighth Circuit	22
 VII. LETTER OF TRANSMITTAL	 23
VIII. PERSONAL REPORT OF ATTORNEY GENERAL	24
General Scope of Duties	24
Administrative Duties of Boards	27
Board of Commissioners of State Institutions	27
State Board of Education	27
State Vocational Board	28
State Board of Pardons	28
Trustees I. I. Fund and State Drainage Commissioners	28
State Canvassing Board	29
Florida Securities Commission	29
State Budget Commission	29
Board of Administration	29
Commission to Examine into Validity State Warrants... ..	30
State Sinking Fund Commission	30
Railroad, Telegraph and Telephone Assessment Board... ..	31
State School Book Commission	31
Board for Fixing Values of Investment and Securities of Trust Companies	31
Board of Commissioners of Okeechobee Flood Control District	31
Delinquent Tax Adjustment Board of Appeals	31

TABLE OF CONTENTS (Continued)

	Page
Board for Supervision and Regulation of Forms to be Used for Assumption or Risk by Surety Companies	31
State Board of Conservation	32
State Housing Board	32
Official Opinions	32
Unofficial Opinions	33
State Statutes Tested in Courts	33
Reporter for the Supreme Court	33
Publishing Acts and Resolutions of Legislature	34
Examination of Abstracts of Title	34
Extradition Matters	34
Office Furnishings and Library	34
Additional Help for Attorney General	35
IX. APPROPRIATIONS AND EXPENDITURES	36
X. COMPILED STATEMENT OF ALL CASES HANDLED	38
XI. TABULATED REPORT OF CIVIL CASES	39
XII. TABULATED REPORT OF CRIMINAL CASES	55
XIII. REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS	68



I.

STATE LAW DEPARTMENT

CARY D. LANDIS	Attorney General
H. E. CARTER	Assistant Attorney General
ROY CAMPBELL	Assistant Attorney General
MARVIN C. MCINTOSH	Assistant Attorney General
ROBERT J. PLEUS	Assistant Attorney General
J. V. KEEN	Assistant Attorney General
MRS. ALLIE YAWN BROWN	Law Clerk and Bookkeeper
MRS. MARGARET E. GANNON	Law Clerk and Stenographer
MISS EVELYN DAVIS	Law Clerk and Stenographer
MISS LORRAINE WARE	Secretary and Stenographer
MRS. BERTHA W. BOHLER	Stenographer

II.

ATTORNEYS GENERAL OF FLORIDA

1845-1934

JOSEPH BRANCH	1845-1846
AGUSTUS E. MAXWELL	1846-1848
JAMES T. ARCHER	1848-1848
DAVID P. HOGUE	1848-1853
MARIANO D. PAPP	1853-1860
JOHN B. GALBRAITH	1860-1868
JAMES D. WESCOTT, JR.	1868-1868
A. R. MEEK	1868-1870
SHERMAN CONANT	1870-1870
J. B. C. DREW	1870-1872
H. BISSBEE, JR.	1872-1872
J. P. C. EMMONS	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RANEY	1877-1885
C. M. COOPER	1885-1889
WILLIAM B. LAMAR	1889-1903
JAMES B. WHITFIELD	1903-1904
W. H. ELLIS	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST	1913-1917
VAN C. SWEARINGEN	1917-1921
RIVERS BUFORD	1921-1925
J. B. JOHNSON	1925-1927
FRED H. DAVIS	1927-1931
CARY D. LANDIS	1931-1934

III.

FORMER ASSISTANT ATTORNEYS GENERAL OF FLORIDA

CHARLES O. ANDREWS	1911-1919
GLENN TERRELL	1915-1917
WORTH TRAMMELL	1917-1921
STUART GILLIS	1919-1921
J. B. GAINES	1921-1926
MARVIN C. MCINTOSH	1921-1926
H. E. CARTER	1926-1934
ROY CAMPBELL	1926-1934
MARVIN C. MCINTOSH	1931-1934
ROBERT J. PLEUS	1933-1934
J. V. KEEN	1933-1934

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL

UNDER CHAPTER 11828, ACTS OF 1927

(Repealed by Chapter 14556, Acts 1920

Approved June 19, 1929)

A. H. WILLIAMS, Tallahassee, Florida.
J. MCHENRY JONES, Pensacola, Florida.
WALLACE TERVIN, Bradenton, Florida.

IV.

JUDICIAL DEPARTMENT OF FLORIDA SUPREME COURT JUSTICES

TALLAHASSEE

DIVISION A

Hon. JAMES B. WHITFIELD, Chief Justice,
Hon. ARMSTEAD BROWN,
Hon. FRED H. DAVIS.

DIVISION B

Hon. WILLIAM H. ELLIS, Presiding Justice,
Hon. GLENN TERRELL,
Hon. RIVERS BUFORD.

Hon. G. T. WHITFIELD, Clerk Supreme Court.
Hon. CARY D. LANDIS, Attorney General.
Hon. T. T. TURNBULL, Attorney for State Railroad Commission.
Hon. C. O. WRIGHT, Attorney for State Road Department.

JUDGES OF THE CIRCUIT COURT

- FIRST CIRCUIT—Hon. A. G. CAMPBELL, Hon. L. L. FABISINSKI.
SECOND CIRCUIT—Hon. EDWARD C. LOVE, Hon. J. B. JOHNSON.
THIRD CIRCUIT—Hon. HAL W. ADAMS, Hon. R. H. ROWE.
FOURTH CIRCUIT—Hon. GEORGE COUPER GIBBS, Hon. DEWITT T. GRAY.
DUVAL CIRCUIT—Hon. MILES W. LEWIS.
FIFTH CIRCUIT—Hon. W. S. BULLOCK.
SIXTH CIRCUIT—Hon. JOHN U. BIRD, Hon. T. FRANK HOBSON, Hon. JOHN L. VINING.
SEVENTH CIRCUIT—Hon. M. G. ROWE.
EIGHTH CIRCUIT—Hon. H. L. SEBRING.
NINTH CIRCUIT—Hon. D. J. JONES.
TENTH CIRCUIT—Hon. H. C. PETTEWAY.
ELEVENTH CIRCUIT—Hon. H. F. ATKINSON, Hon. PAUL D. BARNES, Hon. ULY O. THOMPSON, Hon. W. W. TRAMMELL.
TWELFTH CIRCUIT—Hon. GEO. W. WHITEHURST.
THIRTEENTH CIRCUIT—Hon. L. L. PARKS, Hon. CURTIS L. SPARKMAN.
FOURTEENTH CIRCUIT—Hon. AMOS LEWIS.
FIFTEENTH CIRCUIT—Hon. C. E. CHILLINGWORTH.
SIXTEENTH CIRCUIT—Hon. J. C. B. KOONCE.
SEVENTEENTH CIRCUIT—Hon. FRANK A. SMITH.
EIGHTEENTH CIRCUIT—Hon. W. T. HARRISON.
NINETEENTH CIRCUIT—Hon. W. J. BARKER.
TWENTIETH CIRCUIT—Hon. JEFFERSON B. BROWNE.
TWENTY-FIRST CIRCUIT—Hon. ELWYN THOMAS.
TWENTY-SECOND CIRCUIT—Hon. GEO. W. TEDDER.
TWENTY-THIRD CIRCUIT—Hon. MILLARD B. SMITH.
TWENTY-FOURTH CIRCUIT—Hon. FRED L. STRINGER.
TWENTY-FIFTH CIRCUIT—Hon. GEO. W. JACKSON.
TWENTY-SIXTH CIRCUIT—Hon. A. Z. ADKINS.
TWENTY-SEVENTH CIRCUIT—Hon. PAUL C. ALBRITTON.
TWENTY-EIGHTH CIRCUIT—Hon. IRA A. HUTCHISON.

JUDGE OF THE COURT OF RECORD

ESCAMBIA COUNTY—Hon. C. MORENO JONES.

JUDGES OF THE CRIMINAL COURT OF RECORD

DADE COUNTY—Hon. E. C. COLLINS.
DUVAL COUNTY—Hon. WM. J. PORTER

HILLSBOROUGH COUNTY—Hon. W. H. PETTEWAY.

MONROE COUNTY—Hon. J. VINING HARRIS.

ORANGE COUNTY—Hon. W. M. MURPHY.

PALM BEACH COUNTY—Hon. JOHN L. MOORE.

POLK COUNTY—Hon. MARK O'QUIN.

JUDGE OF THE COURT OF CRIMES

DADE COUNTY—Hon. W. F. BROWN.

JUDGES OF THE CIVIL COURT OF RECORD

DADE COUNTY—Hon. D. J. HEFFERMAN, Hon. A. B. SMALL.

DUVAL COUNTY—Hon. BURTON BARRS.

STATE ATTORNEYS

FIRST CIRCUIT—Hon. E. DIXIE BEGGS, Jr. Pensacola.

SECOND CIRCUIT—Hon. ORION C. PARKER, Jr. Tallahassee.

THIRD CIRCUIT—Hon. J. R. KELLY, Madison.

FOURTH CIRCUIT—Hon. JOHN W. HARRELL, Jacksonville.

FIFTH CIRCUIT—Hon. A. P. BUIE, Ocala.

SIXTH CIRCUIT—Hon. CHESTER B. McMULLEN, Clearwater.

SEVENTH CIRCUIT—Hon. MURRAY SAMS, DeLand.

EIGHTH CIRCUIT—Hon. J. C. ADKINS, Gainesville.

NINTH CIRCUIT—Hon. L. D. McRAE, Chipley.

TENTH CIRCUIT—Hon. J. C. RODGERS, Lakeland.

ELEVENTH CIRCUIT—Hon. VERNON HAWTHORNE, Miami.

TWELFTH CIRCUIT—Hon. GUY M. STRAYHORN, Fort Myers.

THIRTEENTH CIRCUIT—Hon. J. REX FARRIOR, Tampa.

FOURTEENTH CIRCUIT—Hon. JOHN H. CARTER, Jr., Marianna.

FIFTEENTH CIRCUIT—Hon. W. J. SALISBURY, West Palm Beach.

SIXTEENTH CIRCUIT—Hon. J. W. HUNTER, Tavares.

SEVENTEENTH CIRCUIT—Hon. H. F. MOHR, Orlando.

EIGHTEENTH CIRCUIT—Hon. DEWEY A. DYE, Bradenton.

NINETEENTH CIRCUIT—Hon. L. GRADY BURTON, Wauchula.

TWENTIETH CIRCUIT—Hon. JOHN G. SAWYER, Key West.

TWENTY-FIRST CIRCUIT—Hon. ANGUS SUMNER, Fort Pierce.

TWENTY-SECOND CIRCUIT—Hon. LOUIS F. MAIRE, Fort Lauderdale.

TWENTY-THIRD CIRCUIT—Hon. LLOYD F. BOYLE, Sanford.

TWENTY-FOURTH CIRCUIT—Hon. M. C. SCOFIELD, Inverness.

TWENTY-FIFTH CIRCUIT—Hon. JULIAN C. CALHOUN, Palatka.

TWENTY-SIXTH CIRCUIT—Hon. A. S. CREWS, Starke.

TWENTY-SEVENTH CIRCUIT—Hon. HENRY L. WILLIFORD, Sarasota.

TWENTY-EIGHTH CIRCUIT—Hon. C. R. MATHIS, Panama City.

COUNTY SOLICITORS

DADE—Hon. FRED PINE, Miami.

DUVAL—Hon. L. D. HOWELL, Jacksonville.

ESCAMBIA—Hon. R. H. MERRITT, Pensacola.

HILLSBOROUGH—Hon. C. JAY HARDEE, Tampa.

MONROE—Hon. AQUILINO LOPEZ, Key West.

ORANGE—Hon. O. RAY ELLARS, Orlando.

PALM BEACH—Hon. W. E. ROEBUCK, West Palm Beach.

POLK—Hon. MANUEL M. GLOVER, Bartow.

V.
COUNTIES AND COUNTY SEATS AND COUNTY OFFICERS

County	County Seat	Clerk Circuit Court	County Judge	Sheriff	Assessor of Taxes	Tax Collector	Superintendent Public Instruction
Alachua	Gainesville	Geo. E. Evans	B. D. Hiers	J. P. Ramsey	John W. Booth	R. Frank Long	Horace F. Zetrouer
Baker	Macleenny	Johnnie A. Burnett	Frank Dowling	Joe Jones, Jr.	B. Frank Jones	D. W. Finley	J. E. Kelly
Bay	Panama City	H. A. Pledger	C. S. Russ	O. E. Hobbs	Duncan G. McQuagge	A. G. Appelberg	L. L. Thompson
Bradford	Starke	A. J. Thomas	E. K. Perryman	W. J. Epperson	N. D. Wainwright	Carl A. Knight	A. J. Griffith
Brevard	Titusville	G. M. Simmons	Leonard B. Newman	Roy F. Roberts	Philip H. Wright	H. C. Morgan	A. W. Donaldson
Broward	Ft. Lauderdale	E. R. Bennett	Boyd H. Anderson	Walter R. Clark	L. O. Hansen	W. O. Berryhill	Ulric J. Bennett
Calhoun	Blountstown	J. A. Peacock	W. T. Chafin	R. L. Flanders	Tom Traylor	J. R. Richards	J. K. Musgrove
Charlotte	Punta Gorda	T. C. Crosland	W. R. Roberts	J. H. Lipscomb	A. C. Jordan	E. Burnette Yeager	Paul Eddy
Citrus	Inverness	Claude Conner	E. C. May	Charles S. Dean	Joe S. Savary	A. S. King	I. R. Nolen
Clay	Green Cove Springs	L. T. Ivey	T. J. Jennings, Jr.	J. P. Hall	E. V. Priest	C. L. Saunders	R. D. Fisher
Collier	Everglade	Ed F. Scott	W. Z. Platt	L. J. Thorp	D. W. McLeod	C. H. Collier	Ernest Bridges
Columbia	Lake City	Hugh B. Summers	Guy Gillen	Walter W. Davis	E. R. Hale	A. B. McDuffie	Geo. R. Graham
Dade	Miami	E. B. Leatherman	W. F. Blanton	D. C. Coleman	J. N. Lummus, Jr.	W. R. Becker	Chas. M. Fisher
DeSoto	Arcadia	R. E. Moye	Gordon Hays	J. L. Hampton	C. D. Boring	C. F. Hull	J. Garfield Johnson
Dixie	Cross City	L. L. Currie	E. M. Barber	F. L. Anderson	S. R. Langston	J. R. Roberts	Ollie Williams
Duval	Jacksonville	Elliot W. Butts	J. Ollie Edmunds	Rex Sweat	A. H. St. John	R. H. Carswell	R. C. Marshall
Escambia	Pensacola	Langley Bell	Harvey E. Page	H. E. Gandy	Wiley J. McDavid	T. T. Wentworth, Jr.	J. H. Varnum
Flagler	Bunnell	Dale B. Brown	H. A. Eisenbach	H. R. Whitaker	D. D. Moody	J. F. Mercer	Z. E. Booe
Franklin	Apalachicola	W. F. Dodd	William Sawyer	W. J. Lovett	Mrs. Eleanor H. Floyd	Harry Sawyer	John C. Moore
Gadsden	Quincy	F. P. Morgan	E. M. Dyal	W. M. Inman	S. W. Carmen	J. M. Rowan	C. H. Gray
Gilchrist	Trenton	H. E. Harliee	M. G. Akins	R. E. Davis	Hugh V. Miller	M. E. Whitty	Ernest P. Turner
Glades	Moore Haven	Mrs. D. S. Weeks	R. C. Vorhees	J. J. Higgins	I. E. Scott	J. P. Moore	Mrs. Caroline Bales
Gulf	Wewahatchka	J. R. Hunter	M. H. Chafin	J. E. Pridgeon	Samuel A. Patrick	Theo. D. Levins	Chauncey L. Costin
Hamilton	Jasper	W. A. Lewis	B. B. Johnson	J. H. Hunter	Grif J. Register	M. W. Wetherington	W. W. Bradshaw
Hardee	Wauchula	R. Clyde Simmons	F. G. Janes, Jr.	C. S. Dishong	Fred Southerland	L. J. Carlton	T. E. Blackburn
Hendry	LaBelle	Wm. T. Hull	H. L. Rider	H. L. DeLaney	Hurd L. Reeves	Frank A. Dougherty	E. L. Stallings
Hernando	Brooksville	H. C. Mickler	E. S. McKenzie	Neil F. Law	F. Elmore Saxon	J. T. Daniel	I. B. Turnley
Highlands	Sebring	W. Z. Carson	M. C. Whitehurst	Doyle Schumacher	Cyril Baldwin	Ruth Bass Hylton	F. N. K. Bailey
Hillsborough	Tampa	Chas. E. Culbreath	G. H. Cornelius	Will C. Spencer	W. S. Sparkman	J. M. Burnett	E. L. Robinson
Holmes	Bonifay	J. W. Van Landingham	T. L. Belser	Lon F. Brown	H. D. Howell	W. R. Faircloth	Ira C. Bush
Indian River	Vero	Miles Warren	C. P. Diamond	Wm. Frick	W. R. Duncan	Troy E. Moody	Louis Harris
Jackson	Marianna	H. A. Bowles	D. H. Oswald	W. Flake Chambliss	W. A. McQuagge	Leo Sims	Carroll P. Finlayson
Jefferson	Monticello	C. H. Sauls	T. B. Bird	A. S. Grant	S. C. Walker	R. J. Taylor	B. J. Hamrick

LaFayette	Mayo	Cullen W. Edwards	E. S. Winburn	Thomas J. Pearson	Thomas J. Sims	A. T. Folsom, Sr.	G. N. Trawick
Lake	Tavares	Geo. J. Dykes	E. M. Tally	W. B. Gibson	A. E. Pace	B. A. Williams	D. H. Moore
Lee	Ft. Myers	W. L. Draughon	David E. Ward	Bob King	John M. Boring	R. Vivian Lee	Harry F. Hendry
Leon	Tallahassee	Paul V. Lang	W. May Walker	Frank Stoutamire	Wm. A. Bass	W. K. Collins	Frank S. Hartsfield
Levy	Bronson	L. W. Drummond	J. C. Sale	W. B. Whiddon	F. Frank McCall	M. D. Graham	H. S. Priest
Liberty	Bristol	W. G. Larkins	Carlton G. Herndon	E. A. Chestang	R. H. Deason	Mrs. Mary A. Roberts	John T. Howard
Madison	Madison	D. F. Burnett, Jr.	Joseph W. Kinsey	G. L. Morrow	Angus H. Armstrong	Joe Hill Smith	Edwin B. Browning
Manatee	Bradenton	Iverson L. Lloyd	Walter H. Tucker	J. P. Davidson	James A. Howze	Ralph B. Johnson	Jessie P. Miller
Marion	Ocala	T. D. Lancaster	L. E. Futch	S. C. M. Thomas	J. E. Thomas	L. R. Bracken	Don T. Mann
Martin	Stuart	J. R. Pomeroy	E. J. Smith, Jr.	C. E. Christensen	A. C. Courson	L. C. Kickliter	J. A. Jamison
Monroe	Key West	Ross C. Sawyer	Hugh Gunn	Karl O. Thompson	J. Otto Kirchheimer	Frank H. Ladd	Melvin E. Russell
Nassau	Fernandina	G. C. Burgess	H. V. Burgess	A. J. Higginbotham	B. H. Swearingen	Louis A. Klarer	N. J. Wooten
Okaloosa	Crestview	Allen T. Carr	Lloyd C. Powell	John P. Steel	Val C. Clarke	Cortez L. Campbell	Mallory B. Barrow
Okeechobee	Okeechobee	J. L. Barber	T. W. Conely, Jr.	Claude Simmons	Robert La Martin	Mrs. Bessie Alderman	F. H. Baggott
Orange	Orlando	Clarence M. Gay	Victor Hutchins	Harry Hand	Arthur Butt	Clyde M. McKinney	Judson B. Walker
Osceola	Kissimmee	J. L. Overstreet	J. F. Robinson	Young Tindall	Glen Ray	C. L. Bandy	Sam Brammar
Palm Beach	West Palm Beach	Geo. O. Butler	Richard P. Robbins	W. Hiram Lawrence	James M. Owens, Jr.	Tom J. Campbell	Joe A. Youngblood
Pasco	Dade City	A. J. Burnside	J. W. Sanders	C. E. Dowling	W. V. Gilbert	H. G. Batchelor	Fred O. Revels
Pinellas	Clearwater	K. B. O'Quinn	Harry R. Hewitt	E. G. Cunningham	Chas. A. Wilcox	D. C. Wilkinson	George M. Lynch
Polk	Bartow	J. D. Raulerson	Chester M. Wiggins	W. W. Chase	John B. White	Paul M. Henderson	C. I. Hollingsworth
Putnam	Palatka	W. A. Williams, Jr.	C. S. Green	R. J. Hancock	E. W. Watkins	Randall Wells	L. S. Barstow
St. Johns	St. Augustine	Obe P. Goode	John P. Baker	E. E. Boyce	J. R. Heller	S. C. Middleton	D. D. Corbett
St. Lucie	Ft. Pierce	W. R. Lott	Flem. C. Dame	B. A. Brown	E. R. Pierce	Orris Nobles	N. H. Bullard
Santa Rosa	Milton	George H. Leonard	Arrie L. Johnson	Joe T. Allen	D. H. Melvin	W. A. Stewart	J. C. Word
Sarasota	Sarasota	J. R. Peacock	Francis C. Dart	C. B. Pearson	J. Paul Gaines	Chas. G. Strohmeier	T. W. Yarbrough
Seminole	Sanford	V. E. Douglass	James G. Sharon	J. F. McClelland	Alexander Vaughan	John D. Jinkins	T. W. Lawton
Sumter	Bushnell	Roy Caruthers	J. M. Eaddy	W. T. Coleman	Inman Wheeler	J. H. Hughes	Broward Miller
Suwannee	Live Oak	R. T. Miller	Mack H. Padgett	P. B. Cannon	F. M. Green	M. M. Foxworth	W. T. Newsome
Taylor	Perry	J. R. Jackson	L. Waller Blanton	F. M. Lipscomb	Abner E. Morgan	Alton C. Hendry	L. R. Moore
Union	Lake Butler	S. T. Dowling	J. E. J. Wainwright	W. S. Brannen, Jr.	J. DeWitt Knight	Ury G. Sapp	T. Shepard Thomas
Volusia	DeLand	I. Walter Hawkins	J. E. Peacock	S. E. Stone	W. Homer Smith	D. P. Smith	Geo. W. Marks
Wakulla	Crawfordville	L. L. Pararo	A. L. Porter	Emmett C. Ferrell	J. A. Harper	W. G. Durrance	A. R. Pearce
Walton	DeFuniak Springs	M. T. Fountain	L. H. Brannon	M. H. Prescott	D. C. Adkinson	W. T. Ray	Archie N. Anderson
Washington	Chibley	Leon R. Cox	A. D. Carmichael	John P. Harrell	W. L. Tiller	R. Carey Fleming	Neil D. Blue

VI.

CIRCUIT COURT CALENDAR

FIRST JUDICIAL CIRCUIT

JUDGES: A. G. CAMPBELL, DeFuniak Springs
L. L. FABISINSKI, Pensacola

STATE'S ATTORNEY: E. DIXIE BEGGS, JR., Pensacola

COURT REPORTER: JULIA MCKINNON, DeFuniak Springs

WINTER TERM

WALTON	Second Monday January
SANTA ROSA	Second Monday after Second Monday January
ESCAMBIA	Second Monday February
OKALOOSA	Second Monday December

SPRING TERM

WALTON	Second Monday May
SANTA ROSA	Second Monday after Second Monday May
ESCAMBIA	Second Monday June
OKALOOSA	Last Monday April

FALL TERM

WALTON	Second Monday September
SANTA ROSA	Second Monday after Second Monday September
ESCAMBIA	Second Monday October
OKALOOSA	Last Monday August

SECOND JUDICIAL CIRCUIT

JUDGES: E. C. LOVE, Quincy
JOHN B. JOHNSON, Tallahassee

STATE'S ATTORNEY: ORION C. PARKER, JR., Tallahassee

COURT REPORTER: JOHN H. PATTERSON, JR., Tallahassee

SPRING TERM

FRANKLIN	Third Monday March
LIBERTY	First Monday April
GADSDEN	First Monday March
WAKULLA	Third Monday April
JEFFERSON	First Monday May
LEON	Third Monday May

FALL TERM

FRANKLIN	Third Monday September
LIBERTY	First Monday October
GADSDEN	Third Monday October

WAKULLA
JEFFERSON
LEON

First Monday November
Third Monday November
First Monday December

THIRD JUDICIAL CIRCUIT

JUDGES: HAL W. ADAMS, Mayo
R. H. ROWE, Madison

STATE'S ATTORNEY: J. R. KELLY, Madison

COURT REPORTER: GUSSIE MILLER, Lake City

SPRING TERM

HAMILTON
DIXIE
TAYLOR
MADISON
COLUMBIA
SUWANNEE
LAFAYETTE

Fourth Monday January
Third Monday February
Fourth Monday March
Second Monday April
Fourth Monday April
Second Monday May
Second Monday June

FALL TERM

HAMILTON
DIXIE
TAYLOR
MADISON
COLUMBIA
SUWANNEE
LAFAYETTE

Second Monday September
Second Monday August
Fourth Monday September
Second Monday October
Fourth Monday October
Second Monday November
First Monday December

FOURTH JUDICIAL CIRCUIT

JUDGES: MILES W. LEWIS (Duval Circuit), Jacksonville

GEORGE COUPER GIBBS, Jacksonville

DEWITT T. GRAY, Jacksonville

STATE'S ATTORNEY: JOHN W. HARRELL, Jacksonville

ASSISTANT STATE'S ATTORNEY: BRYAN SIMPSON, Jacksonville

COURT REPORTER: RALPH W. PATTERSON, Jacksonville

SPRING TERM

CLAY
NASSAU
DUVAL

First Tuesday after First Monday April
Third Monday April
Third Monday May

FALL TERM

CLAY
NASSAU
DUVAL

Second Monday October
Fourth Monday October
Fourth Monday November

FIFTH JUDICIAL CIRCUIT

JUDGE: W. S. BULLOCK, Ocala
STATE'S ATTORNEY: A. P. BUIE, Ocala
COURT REPORTER: B. J. HUNTER, Ocala

SPRING TERM

MARION Second Monday February

SUMMER TERM

MARION Second Monday June

FALL TERM

MARION Second Monday October

SIXTH JUDICIAL CIRCUIT

JUDGES: JOHN U. BIRD, Clearwater
T. FRANK HOBSON, St. Petersburg
JOHN L. VINING, St. Petersburg
STATE'S ATTORNEY: CHESTER B. McMULLEN, Clearwater
COURT REPORTER: B. E. SATTERFIELD, Clearwater

SPRING TERM

PINELLAS First Monday May
PASCO First Tuesday April

FALL TERM

PINELLAS First Monday December
PASCO First Tuesday October

SEVENTH JUDICIAL CIRCUIT

JUDGE: M. G. ROWE, Daytona Beach
STATE'S ATTORNEY: MURRAY SAMS, DeLand
COURT REPORTER: TAYLOR OWENS, Daytona Beach

SUMMER TERM

VOLUSIA Third Tuesday July

WINTER TERM

VOLUSIA Third Tuesday January

EIGHTH JUDICIAL CIRCUIT

JUDGE: H. L. SEBRING, Gainesville
STATE'S ATTORNEY: J. C. ADKINS, Gainesville
COURT REPORTER: AGNES HAMITER, Gainesville

SPRING TERM

ALACHUA Second Monday May
GILCHRIST Fourth Monday April
LEVY Second Monday April

FALL TERM

ALACHUA
GILCHRIST
LEVY

Second Monday November
Third Monday October
Fourth Monday September

NINTH JUDICIAL CIRCUIT

JUDGE: D. J. JONES, Chipley
STATE'S ATTORNEY: L. D. McRAE, Chipley
COURT REPORTER: O. C. SPEIGHT, Chipley

SPRING TERM

HOLMES
WASHINGTON

Fourth Monday February
Fourth Monday March

FALL TERM

HOLMES
WASHINGTON

Fourth Monday September
Fourth Monday October

TENTH JUDICIAL CIRCUIT

JUDGE: H. C. PETTEWAY, Lakeland
STATE'S ATTORNEY: J. C. ROGERS, Lakeland
COURT REPORTER: KATE CARVER, Lakeland

SPRING TERM

POLK

Second Tuesday March

FALL TERM

POLK

Second Tuesday October

ELEVENTH JUDICIAL CIRCUIT

JUDGES: H. F. ATKINSON, Miami
ULY O. THOMPSON, Miami
PAUL D. BARNES, Miami
W. W. TRAMMELL, Miami
STATE'S ATTORNEY: VERNON HAWTHORNE, Miami
ASSISTANT STATE'S ATTORNEY: HENRY M. JONES, Miami
COURT REPORTER: J. E. KELLY, Miami

SPRING TERM

DADE

Second Tuesday May

FALL TERM

DADE

Second Tuesday November

WINTER TERM

DADE

Second Tuesday February

TWELFTH JUDICIAL CIRCUIT

JUDGE: GEO. W. WHITEHURST, Fort Myers

STATE'S ATTORNEY: GUY M. STRAYHORN, Fort Myers

COURT REPORTER: EDWARD LEE, Arcadia

SPRING TERM

GLADES	First Monday February
COLLIER	First Monday March
HENDRY	Third Monday February
CHARLOTTE	Third Tuesday March
LEE	First Tuesday April

FALL TERM

GLADES	First Monday September
COLLIER	Third Monday September
HENDRY	First Monday October
CHARLOTTE	Third Tuesday October
LEE	First Tuesday November

THIRTEENTH JUDICIAL CIRCUIT

JUDGES: L. L. PARKS, Tampa

CURTIS L. SPARKMAN, Tampa

STATE'S ATTORNEY: J. REX FARRIOR, Tampa

ASSISTANT STATE'S ATTORNEY: ROYAL M. HUNTLEY, Tampa

COURT REPORTER: ROBT. F. JOHNSON, Tampa

SPRING TERM

HILLSBOROUGH	First Tuesday May
--------------	-------------------

FALL TERM

HILLSBOROUGH	First Tuesday November
--------------	------------------------

FOURTEENTH JUDICIAL CIRCUIT

JUDGE: AMOS LEWIS, Marianna

STATE'S ATTORNEYS JOHN H. CARTER, JR., Marianna

COURT REPORTER: LONA S. HORNE, Marianna

SPRING TERM

JACKSON	Second Monday May
CALHOUN	Fourth Monday April
GULF	Second Monday April

FALL TERM

JACKSON	Second Monday October
CALHOUN	Fourth Monday September
GULF	Second Monday September

WINTER TERM

JACKSON	Second Monday January
---------	-----------------------

FIFTEENTH JUDICIAL CIRCUIT

JUDGE: C. E. CHILLINGWORTH, West Palm Beach

STATE'S ATTORNEY: J. W. SALISBURY, West Palm Beach

COURT REPORTER: ALICE M. HAYDEN, West Palm Beach

JANUARY TERM

PALM BEACH First Tuesday after First Monday January

MARCH TERM

PALM BEACH First Tuesday after First Monday March

JUNE TERM

PALM BEACH First Tuesday after First Monday June

OCTOBER TERM

PALM BEACH First Tuesday after First Monday October

SIXTEENTH JUDICIAL CIRCUIT

JUDGE: J. C. B. KOONCE, Tavares

STATE'S ATTORNEY: J. W. HUNTER, Tavares

COURT REPORTER: W. P. ETHREDGE, TAVARES

SPRING TERM

SUMTER Third Monday April

LAKE First Tuesday after First Monday in May

FALL TERM

SUMTER Third Monday October

LAKE First Tuesday after First Monday in October

SEVENTEENTH JUDICIAL CIRCUIT

JUDGE: FRANK A. SMITH, Orlando

STATE'S ATTORNEY: H. F. MOHR, Orlando

COURT REPORTER: L. C. ALGEE, Ocala

SPRING TERM

OSCEOLA Third Monday March

ORANGE Third Monday April

FALL TERM

OSCEOLA Third Monday September

ORANGE Third Monday October

EIGHTEENTH JUDICIAL CIRCUIT

JUDGE: W. T. HARRISON, Palmetto

STATE'S ATTORNEY: DEWEY A. DYE, Bradenton

COURT REPORTER: LAWSON MAGRUDER, Bradenton

SPRING TERM

MANATEE Second Tuesday March

FALL TERM

MANATEE Third Tuesday October

NINETEENTH JUDICIAL CIRCUIT

JUDGE: W. J. BARKER, Sebring

STATE'S ATTORNEY: L. GRADY BURTON, Wauchula

COURT REPORTER: JAMES N. BALL, Sebring

SPRING TERM

DeSOTO
HARDEE
HIGHLANDSFirst Tuesday March
Third Tuesday March
First Tuesday April

FALL TERM

DeSOTO
HARDEE
HIGHLANDSFirst Tuesday October
Third Tuesday October
First Tuesday November

TWENTIETH JUDICIAL CIRCUIT

JUDGE: JEFFERSON B. BROWNE, Key West

STATE'S ATTORNEY: GEO. G. BROOKS, JR., Key West

COURT REPORTER: MARY F. WHITMARSH, Key West

SPRING TERM

MONROE

Third Monday April

FALL TERM

MONROE

Third Monday October

TWENTY-FIRST JUDICIAL CIRCUIT

JUDGE: ELWYN THOMAS, Fort Pierce

STATE'S ATTORNEY: ANGUS SUMNER, Fort Pierce

COURT REPORTER: E. E. SANDERSON, Fort Pierce

SPRING TERM

INDIAN RIVER
ST. LUCIE
OKEECHOBEE
MARTINSecond Tuesday March
Second Tuesday April
Second Tuesday February
Second Tuesday June

FALL TERM

INDIAN RIVER
ST. LUCIE
OKEECHOBEE
MARTINSecond Tuesday October
Second Tuesday November
Second Tuesday September
Second Tuesday January

TWENTY-SECOND JUDICIAL CIRCUIT

JUDGE: GEO. W. TEDDER, Fort Lauderdale

STATE'S ATTORNEY: LOUIS F. MAIRE, Fort Lauderdale

COURT REPORTER: J. W. COLEMAN, Fort Lauderdale

SPRING TERM

BROWARD

Second Tuesday March

FALL TERM

BROWARD

Second Tuesday October

TWENTY-THIRD JUDICIAL CIRCUIT

JUDGE: MILLARD B. SMITH, Titusville

STATE'S ATTORNEY: LLOYD F. BOYLE, Sanford

COURT REPORTER: JESSIE D. KLEINMAN, Sanford

SPRING TERM

SEMINOLE

Fourth Tuesday May

BREVARD

Fourth Tuesday March

FALL TERM

SEMINOLE

First Tuesday December

BREVARD

Second Tuesday October

TWENTY-FOURTH JUDICIAL CIRCUIT

JUDGE: FRED L. STRINGER, Brooksville

STATE'S ATTORNEY: M. C. SCOFIELD, Inverness

COURT REPORTER: RUTH MURPHY, Brooksville

SPRING TERM

CITRUS

Second Monday April

HERNANDO

Second Monday March

FALL TERM

CITRUS

Second Monday November

HERNANDO

Second Monday October

TWENTY-FIFTH JUDICIAL CIRCUIT

JUDGE: GEORGE WM. JACKSON, St. Augustine

STATE'S ATTORNEY: JULIAN C. CALHOUN, Palatka

COURT REPORTER: LAMAR WARREN, Palatka

SPRING TERM

ST. JOHNS

First Monday June

FLAGLER

Third Monday May

PUTNAM

Second Monday March

FALL TERM

ST. JOHNS

Second Monday November

FLAGLER

Second Monday December

PUTNAM

Second Monday October

TWENTY-SIXTH JUDICIAL CIRCUIT

JUDGE: A. Z. ADKINS, Starke

STATE'S ATTORNEY: A. S. CREWS, Starke

COURT REPORTER: J. L. PEEK, Starke

SPRING TERM

BAKER
BRADFORD
UNIONThird Monday April
First Monday May
Second Monday June

FALL TERM

BAKER
BRADFORD
UNIONSecond Monday October
First Monday November
First Monday December

TWENTY-SEVENTH JUDICIAL CIRCUIT

JUDGE: PAUL C. ALBRITTON, Sarasota

STATE'S ATTORNEY: HENRY L. WILLIFORD, Sarasota

COURT REPORTER: LAMAR B. DOZIER, Sarasota

SPRING TERM

SARASOTA

First Tuesday May

FALL TERM

SARASOTA

Third Tuesday October

WINTER TERM

SARASOTA

Third Tuesday January

TWENTY-EIGHTH JUDICIAL CIRCUIT

JUDGE: IRA A. HUTCHISON, Panama City

STATE'S ATTORNEY: C. R. MATHIS, Panama City

COURT REPORTER: ZOLA FOLKES, Panama City

SPRING TERM

BAY

Second Monday March

FALL TERM

BAY

Fourth Monday September

VII.

LETTER OF TRANSMITTAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE

Tallahassee, Florida, Jan. 1, 1935.


*To His Excellency, Honorable David Sholtz,
Governor of Florida:*

SIR:

As required by the constitutional mandate, directing each officer of the Executive Department to make full report of his official acts, of the receipts and expenditures of his office and of the requirements of the same to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with such mandate, as well as in compliance with long established custom in this State by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the Report of this office, covering the period from January 1, 1933, to December 31, 1934.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.



VIII.

GENERAL SCOPE OF DUTIES

The Attorney General is required by common law to exercise certain powers and perform a great variety of duties of great public importance in the due and proper administration of our State Government.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution as follows:

"The Attorney-General shall be the legal adviser of the Governor, and shall perform such other legal duties as may be prescribed by law. He shall be Reporter for the Supreme Court."

There are many statutes pertaining to the duties and powers of the Attorney General and relating to the conduct of the office and the following are quoted as information:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, also an index to the local acts and an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General

to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feeds stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the adjutant General's office for military purposes (Sec. 2054), approve article of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946), enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court (Sec. 4176), pass upon and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1933), conduct proceedings against insolvent or defaulting insurance companies (Secs. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec. 7450), bring suits to restrain the advertisement of liquors (Sec. 7600); conduct prosecutions against defaulting and delinquent surety companies

(Sec. 6296), assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293).

"Chapter 14832, Laws of Florida, Acts of 1931, creating the State Racing Commission designates the Attorney General as the official attorney of such Commission."

ADMINISTRATIVE DUTIES ON BOARDS

The Attorney General is required to perform a great variety of administrative duties as a member of various boards and he is called upon to answer numerous inquiries from State, County and Municipal officers as matters of information and as an aid to bring about uniformity of administration of the law.

The major part of the important business of the State is performed and handled by Boards and Commissions, created by the Constitution and Laws of the State, and this consumes much of the time of the State officials.

The Attorney General is a member of the following Boards and Commissions:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

This Board is composed of the Governor and his entire cabinet, which includes the Attorney General (Sec. 17, Art. IV, Constitution).

This Board has the management and control of all the State Institutions, which includes the Florida State Hospital, State Prison Farm, all State convicts, both the industrial School for Boys and the School for Girls and the Home for the Feeble Minded.

The control and management of these institutions places upon this Board innumerable and most important duties.

The Attorney General not only acts as a member of this Board but is also its legal advisor in the various legal and quasi legal questions arising in the management of these large and important institutions.

STATE BOARD OF EDUCATION

This Board is composed of the Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (See Sec. 12, Art. III, Const.)

Upon this Board is imposed the duty of taking charge of and handling all lands of the State held for educational purposes, also to conserve, manage and safely keep the educational funds of the State; and also many other duties in connection with the general educational system of the State.

The Attorney General is the legal advisor of this Board, as well as a member thereof.

STATE VOCATIONAL BOARD

By virtue of Chapter 7376, Acts of 1917, (Sec. 842, C. G. L.) the State Board of Education was created the State Vocational Board contemplated by Acts of Congress to co-operate with the Federal Board of Vocational Education in the administration of the Federal Act.

This Board designates the schools at which vocational education in agriculture, the trades and industries shall be taught and also sees to the administering of the provisions of this law.

STATE BOARD OF PARDONS

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. (Sec. 12, Art. IV, Const.).

The Constitution gives this Board the power to remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment.

With an average prison population now of about 3,155 for the year 1933, and 2,956 for the year 1934, it can readily be seen that there are many who feel the urge to apply for clemency of some form.

Two regular meetings of this Board are held each year and during the year 1933 there were 1,990 applications filed with and passed upon by the Board. Life, liberty, suffering and anxiety of the applicants, as well as dependents and society in general, are involved and of necessity careful consideration must be and is given each application, and this consumes a great deal of time of each member of the Board.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS

These Boards are composed of the same officials, to-wit: The Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. (See Sec. 1385 and 1524, respectively, C. G. L.).

The Trustees of the Internal Improvement Fund hold title to and have the exclusive management and control of all lands belonging to the State which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately 1,084,712.99 acres of swamp and overflow land, 3,599.17 acres of Internal Improvement land proper, and an unknown quantity of land owned by the State under its right of sovereignty.

The Attorney General is Attorney and Counsel for this Board. The legal work by way of foreclosures, drafting of contracts, advice to the Board, etc., is very large in volume, and practically consumes the entire time of one assistant and stenographer.

The law places upon the Board of Drainage Commissioners the duty of establishing a system of canals, drains, levees, dikes and reservoir to

drain and reclaim the swamp and overflowed lands within the drainage districts.

Much time is consumed by the members of these boards in carrying out the duties imposed upon them relative to the important matters involved.

STATE CANVASSING BOARD

This Board is composed of the Secretary of State, Comptroller and Attorney General. (Sec. 348, C. G. L.). The duties of this Board are to canvass the returns of all general elections for State officers.

FLORIDA SECURITIES COMMISSION

This Commission was created by Chapter 14899, Acts of 1931, Laws of Florida, and is composed of the Comptroller, Treasurer and Attorney General.

This Board is invested with the power of administering the act and enforcing its provisions. The purpose of the act, is the protection, as far as possible, of the investing public in the purchase of securities. The duties of this Board require frequent meetings and consume considerable time in hearings and study and investigation of Domestic and Foreign Corporations, their assets, plans of operation, etc.

STATE BUDGET COMMISSION

This Commission is composed of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Commissioner of Agriculture and State Superintendent of Public Instruction. (Sec. 1366, C. G. L., also Chap. 14654, Acts 1931.)

It is the duty of this Commission to make and assemble reports of their own departments and of all other bureaus, divisions, officers, commissions, institutions and other State agencies and thus prepare a State Budget to be submitted to the Legislature as a basis for the General Appropriation Bill. This work requires much careful thought and consideration and consumes quite considerable time—many departments and institutions desire to be heard in fairness to their reports and proposed recommendations to be made in the budget.

BOARD OF ADMINISTRATION

Chapter 14486, Laws of Florida, Acts of 1929, provided for a depository of sinking funds and delinquent taxes and other moneys for road and bridge indebtedness of the counties and special road and bridge districts of the State or otherwise, and also provided for the issuance of refunding bonds by such counties and special road and bridge districts, and provided for the creation of the Board of Administration and the disbursement of such funds to pay such indebtedness, etc.

Section 12 of this act provided for a Board of Administration, consisting of the Governor as President, the State Comptroller as Secretary

and the State Treasurer as Treasurer. The Attorney General is the legal advisor of this Board and has the handling of all litigation, in which this Board is a party.

The Board of Administration has become one of the most active boards in the State Government, due to the large amount of bonded obligations existing throughout the entire State, and due to various defaults, readjustments and refunding operations.

The Board meets regularly each week and frequently has special meetings. Its business is of such character that it requires the presence of the Attorney General at these meetings, and there has developed a very large amount of litigation in which the Board of Administration is a party. During the two-year period covered by this report, the Attorney General has handled one hundred seventy-one cases wherein the Board of Administration was a party.

What is commonly known as the Kanner Act, to-wit, Chapter 15891, Laws of Florida, Acts of 1933, places upon the State Board of Administration certain duties relative to the purchase of bonds with the gasoline tax money, and this added greatly to the many duties which had already been placed upon this Board.

In handling the county and various district finances, it frequently appears to be necessary to change investments of certain bonds and to sell and dispose of bonds held for investment at a figure less than par, and it has been suggested in an opinion of the Supreme Court that the proper practice in doing this would be for the Board of Administration to institute suit in Chancery and after giving to interested parties due notice, obtain a decree of the chancellor to the effect that the proposed transfer or change in investment would be proper; and thus it is that the burden of litigation now resting upon the Attorney General's Office in connection with the matters pertaining to the Board of Administration, will be greatly increased as these various settlements and adjustments continue to be required to be made for the best interest of the counties and districts.

COMMISSION TO EXAMINE INTO VALIDITY OF STATE WARRANTS

This Commission is composed of three members, the Comptroller, Treasurer and Attorney General. (Sec. 1361, C. G. L.) The duty of this commission is to pass upon the validity and legality of Comptroller's warrants and the Treasurer's certificates issued prior to July 1, 1871.

STATE SINKING FUND COMMISSION

This Commission is composed of five members—Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (Sec. 1379, C. G. L.)

The control of the sinking fund to retire state debt is vested in this commission.

**BOARD OF ASSESSMENT OF RAILROADS, TELEGRAPH AND
TELEPHONE COMPANIES**

This Board is composed of three members—Comptroller, Attorney General and Treasurer. (Sec. 960, C. G. L.)

The Board's duty is to make assessments of the Railroad, Telegraph and Telephone property in the State. To do this, much data and information have to be gathered, hearings held and most careful consideration and thought given to the matter as well as mature judgment exercised in making these assessments.

STATE SCHOOL BOOK COMMISSION

This Commission is composed of the Governor and his entire cabinet, which includes the Attorney General. (Sec. 852, C. G. L.) It is the duty of this Board to select and adopt a uniform series or system of school books for use in the public schools of the State and to enter into contracts for same with the publishers and to enforce the use of such books.

**BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF
TRUST COMPANIES**

This Board is composed of the Treasurer, Attorney General and Comptroller, and its title indicates the scope of its duties. (Sec. 6131, C. G. L.)

**BOARD OF COMMISSIONERS OF OKEECHOBEE FLOOD
CONTROL DISTRICT**

The Attorney General is one of the ten members of this Board. The duty of this Board is to establish, construct and maintain canals, levees, dikes, etc., and do the things required by the Act, looking to Flood Control of lands set forth and described in the Act. (Chap 13711, Acts of 1929).

DELINQUENT TAX ADJUSTMENT BOARD OF APPEALS

This Board is composed of the Governor, Treasurer and Attorney General. This Board sits as a Board of Appeals in tax appeals provided for in the act creating the Board. (Chap 14,572, Acts of 1929.)

**BOARD FOR SUPERVISION AND REGULATION OF FORMS
TO BE USED FOR ASSUMPTION OR RISK BY
SURETY COMPANIES**

This Board is composed of the Governor, Comptroller, Treasurer and Attorney General, and its title indicates its duties. (Chap. 14,489, Acts of 1929.)

STATE BOARD OF CONSERVATION

This Board is composed of the Governor, Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the State Superintendent of Public Instruction, and the Commissioner of Agriculture. (Chap. 16178, Acts 1933). This Board is vested with all duties, powers and authority over the State Department of Geology and over the shell fish and game of the State.

STATE HOUSING BOARD

This Board is composed of the Governor of the State, State Treasurer, Attorney General and the Commissioner of Agriculture. (Chap. 16028, Acts 1933.) This Board has many and varied duties as set forth in the act creating the Board.

Regular weekly meetings of the Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions are held once each week on Wednesdays. The State Board of Pardons holds two regular meetings each year—March and September—and numerous other special meetings for the consideration of emergency matters. The Railroad Assessment Board meets annually. The Florida Security Commission meets two or more times per month and the other boards meet at irregular times, monthly, quarterly, annually or biennially, as called by their respective chairmen—the meetings being called and held as the business of the particular board demands.

OFFICIAL OPINIONS

In accordance and compliance with the Constitution and statutes of the State, I have during the period of this report, upon request of the administrative officers of the Executive Department of the State Government, prepared written opinions covering their official duties and powers, and have advised with them generally when called upon.

As required by law copies of all such opinions are on file in this office and many of them are set out in full in this report for convenient use by all such officers and others who may have an interest in them.

This office has been frequently called upon by other State officers, boards and commissions, such as the State Hotel Commission, State Board of Conservation, State Labor Inspector, State Board of Control, State Board of Health, etc., for opinions and advice covering their powers and duties, and while this office is not expressly required to do so, yet I have at all times sought to render such advice and furnish such written opinions, feeling that it would be of assistance in the proper interpretation and application of the statutes covering their powers and duties.

Some of these opinions are set forth in this report.

There is a large volume of work done by this office in the nature of consultation with officers wherein legal advice is sought on various ques-

tions arising in the different departments. Frequently much time is required in making proper investigation in order that proper advice may be given. Very much time of the Attorney General is thus consumed but from the very nature of the work, no record of it can be made and hence is not incorporated herein.

UNOFFICIAL OPINIONS

The Attorney General is not charged by law with the duty of advising County, District and Municipal officers.

In the past it seems there has developed a practice, whereby as a matter of courtesy to those making inquiry and with a view to aiding in a uniform administration of the laws that regulate the conduct and prescribe the powers and duties of such officers, the Attorney General has undertaken to advise such officials.

I have undertaken to continue this policy as far as possible. However, the official work of this department is constantly and rapidly increasing and this class of work will of necessity have to be curtailed or more help furnished the office.

I have at all times replied to this class of inquiries as promptly as possible, but at the same time have always given first consideration to official matters.

A large number of these unofficial opinions so rendered are incorporated in this report.

STATE STATUTES TESTED IN THE SUPREME COURT OF FLORIDA AND IN THE FEDERAL COURTS

A large number of State statutes, and especially revenue producing statutes, have been challenged and attacked by appropriate Court proceedings, both in the State and Federal Courts. A complete table of such cases, showing the present status is incorporated in this report as well as all civil cases generally, other than those above mentioned which have had my attention.

Criminal cases reaching the Supreme Court have all been given proper attention, briefs filed and arguments made, the details of and present status is shown in the scheduled report herein. This also applies to all certiorari and habeas corpus proceedings.

REPORTER FOR THE SUPREME COURT

The Constitution requires the Attorney General to act as reporter for the Supreme Court.

During the two-year period covered by this report, the Attorney General has acted as reporter for Volumes 108, 109, 110, 111, 112, 113, 114, 115 of the Florida Supreme Court Reports.

All of this work is quite exacting and requires the greatest care for it must be accurate. Supplying omitted citations of cases must be done

by research and interlineation of the book and page where same may be found—this occurs where the Court cites a case decided at its current term and is at the time unable to give book and page of same.

An Index Digest of the cases of each volume of the reports must be carefully made before it can be printed.

The Court expects the Attorney General to insert in each report a cross index reference of where each case reported may be found in the Southern Reporter—this requirement has been met at all times but it can readily be seen that to supply these references requires much labor and time.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and Resolutions of the Legislature of the State for 1933 have been published with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office, the index to the journals having been prepared as provided by Section 128 (104) Compiled General Laws, 1927.

EXAMINATION OF ABSTRACTS OF TITLE

Where conveyance of title is made to the State or any of its institutions, the abstracts are submitted to the Attorney General, as well as abstracts covering title to property on which mortgages are deposited with the State Treasurer as securities under the Trust Act. This consumes considerable time as and when these matters are presented.

EXTRADITION MATTERS

It is the fixed policy of the Governor to refer to the Attorney General the applications for extradition of fugitives from justice. These applications have to be examined and approved or rejected, and not infrequently hearings are requested and had and written recommendations made to the Governor, all of which require considerable time of either the Attorney General or one of the Assistants.

OFFICE FURNISHINGS AND LIBRARY

Co-operating in the spirit of economy, I have purchased only such small items of furniture as was absolutely necessary and have bought only such books for the library as were necessary in particular cases actually in the office. The continuing series of law books have, of course, been kept up to date.

ADDITIONAL HELP FOR ATTORNEY GENERAL

During the years 1933 and 1934, the period covered by this Report, the work of this office has increased tremendously as is shown by the report of the great number of cases in the various courts involving state matters. The request for advice, conferences and opinions relating to the collection of State revenue has increased greatly. The office with its present personnel has been much overtaxed. My appropriation being exhausted it was necessary for the State Comptroller's Office to furnish a regular Stenographer to this office in order that we could get out the work for this office in due course.

The tremendous amount of litigation has increased our necessity for filing cabinets, and a Filing Clerk is sorely needed at this time. We have no place for such extra cabinets or Clerk at this time, but when the offices now used by the State Library are turned over to us we will then have ample quarters.

The work in connection with the legal problems involved in the collection of Estate Taxes is rapidly increasing and this is very important as this is now and will continue to be one of the leading sources of State revenue.

In order that the work of the Attorney may be carried on with proper care and diligence and that the State's interests may be properly cared for I am forced to ask the Legislature for one additional Assistant, one Filing Clerk, and two Stenographers. One Stenographer to take the place of the one now being furnished by the State Comptroller and the other for use by the additional Assistant.

In conclusion, I wish to state that I have endeavored to carry on the work of this department in as economical manner as possible. I especially call attention to the expenditures as shown in this Report. I believe this statement will compare most favorable with the law department of any State or business concern handling a like amount of litigation and legal business.

I cannot close this report without giving due credit to each and every one connected with this department. To do and perform the vast amount of work going through this office, it has been necessary for all to work together as one team and know no definite office hours, all have co-operated in this. Much night work and over hours have been necessary but every one connected with the department has at all times done this willingly and in the proper spirit and they, and each of them, are entitled to their full share of credit for what has been accomplished.

Most respectfully submitted,

CARY D. LANDIS

Attorney General.

IX.

APPROPRIATIONS AND EXPENDITURES SALARIES

APPROPRIATION

Balance January 1, 1933	\$13,761.62
Appropriation, July 1, 1933 to July 1, 1935	66,000.00
TOTAL	\$79,761.62

EXPENDITURES

January 1, 1933, to July 1, 1933—

Attorney General	\$ 3,000.00
Assistant Attorney General	2,375.04
Assistant Attorney General	2,375.04
Law Clerk and Bookkeeper	990.00
Law Clerk and Stenographer	945.00
Law Clerk and Stenographer	945.00
Law Clerk and Stenographer	810.00
Stenographer	527.50
Extra Help	165.00
TOTAL	\$12,132.58
Amount reverted July 1, 1933	1,629.04

\$13,761.62

BALANCE July 1, 1933	\$66,000.00
-----------------------------------	--------------------

July 1, 1933, to January 1, 1935—

Attorney General	\$ 7,499.88
Assistant Attorney General	6,374.88
Assistant Attorney General	5,999.94
Assistant Attorney General	5,999.94
Assistant Attorney General	5,762.50
Assistant Attorney General	5,387.38
Law Clerk and Bookkeeper	2,835.00
Law Clerk and Stenographer	2,662.38
Law Clerk and Stenographer	2,662.38
Law Clerk and Stenographer	2,528.01
Stenographer (16 Mo.)	1,600.00
Extra Help	44.00

TOTAL **\$49,356.29**

BALANCE January 1, 1935	\$16,643.71
--------------------------------------	--------------------

EXPENSE FUNDS

APPROPRIATIONS

Books—		
Balance January 1, 1933	\$	629.63
Office Equipment—		
Balance January 1, 1933		332.67
Indexing and Sidenoting Laws and Indexing Supreme Court Reports—		
Balance January 1, 1933		1,375.00
Incidental—		
Balance January 1, 1933		2,603.33
Necessary and Regular—		
July 1, 1933 to July 1, 1935		7,200.00
Sale of Office Chair		8.00
Refund by Comptroller, Acct. Trans.		34.40
		<hr/>
TOTAL		\$12,183.03

EXPENDITURES

January 1, 1933 to June 30, 1933—		
Books	\$	609.00
Office Equipment		233.00
Indexing and Sidenoting Laws and Indexing Supreme Court Reports		600.00
Incidentals		2,284.87
		<hr/>
TOTAL EXPENDITURES to June 30, 1933	\$	3,726.87
BALANCE July 1, 1933		1,213.76
		<hr/>
		\$ 4,940.63
		<hr/>
BALANCE July 1, 1933, for All Expenses to July 1, 1935		\$ 7,242.40
July 1, 1933 to January 1, 1935—		
Necessary and Regular Expenses		\$ 3,894.20
		<hr/>
BALANCE January 1, 1935		\$ 3,348.20

X.

COMPILED STATEMENT OF ALL CASES HANDLED FROM JANUARY 1, 1933, TO JANUARY 1, 1935

CIVIL CASES

Number pending January 1, 1933	98
Number Docketed from January 1, 1933, to January 1, 1935	231
Total	379
Number handled and disposed of	187
Pending January 1, 1935	192

QUO WARRANTO CASES

Number authorized to be instituted	57
--	----

CRIMINAL CASES

Number pending January 1, 1933	93
Number Docketed from January 1, 1933, to January 1, 1935	308
Total	401
Number handled and disposed of	311
Pending January 1, 1935	90
TOTAL NUMBER Pending January 1, 1935	282

STATEMENT SHOWING COMPARISON OF CASES HANDLED FOR SIX-YEAR PERIOD

	1929-1930	1931-1932	1933-1934
Civil Cases	209	267	379
Quo Warranto Cases	60	63	57
Criminal Cases	321	335	401
Totals	590	665	837

XI.

TABULATED REPORT OF CIVIL CASES

Handled by the Attorney General During the Year 1933-1934

Style	Action	County	Court	Status	Dkt. Pge.
Aiken Open Air School vs. Wilcox	Injunction	Pinellas	Circuit	Pending..	572
Allen vs. City Trust Co.	Receivership	Dade	Circuit	Closed	608
American Oil Co. vs. Gray	Injunction	Leon	Circuit	Closed	557
Appleyard, Inc.	Bankruptcy	Leon	U. S.	Pending..	401 1/2
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	268
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	352
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	431
A. C. L. R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending..	514
A. C. L. R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending..	665
Atl. Life Ins. Co., vs. Johnston	Foreclosure	Duval	Circuit	Closed	543
Atl. Natl. Bank vs. Tucker	Foreclosure	Osceola	Circuit	Closed	301
Bank of Pasco, In Re:	Receivership	Pasco	Circuit	Closed	578
Bankers Trust Co. vs. F. E. C. Ry. Co.	Injunction	Sou. Dist.	U. S.	Pending..	650
Barbee vs. David et al.	Foreclosure	Manatee	Circuit	Pending..	500
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	610
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	611
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	612
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	613
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Pending..	614
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	615
Bickell vs. Lee, Comptroller	Injunction	Nor. Dist.	U. S.	Closed	588

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

40

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Biscayne Co. vs. Trustees I. I. F.	Cancellation of Sale	Dade	Circuit	Pending..	438
Bispham vs. Mayo Com'r. Agri.	Injunction	Sarasota	Circuit	Closed ...	541
Blackwell vs. Kline	Rule Show Cause	Dade	U. S.	Closed ...	600
Board Co. Com'rs Okaloosa Co., vs. Bank	Injunction	Okaloosa	Circuit	Closed ...	550
Board Pub. Inst. vs. Knott	Injunction	Leon	Circuit	Pending..	425
Boley et al. vs. Lee, Compt.	Can. Tax Cert.	Escambia	Circuit	Pending..	726
Bonwit Teller & Co. vs. Lee, Compt.	Injunction	Dade	Circuit	Pending..	680
Brooksville & Inverness R. vs. Amos,	Injunction	Leon	Circuit	Pending..	171
Burch vs. Wilder et al.	Injunction	Leon	Circuit	Closed ...	537
Capital City Bank vs. Davis	Injunction	Leon	Circuit	Pending..	133
Carcaba et al. vs. McNair	Trusteeship	Dade	U. S.	Closed ...	278
Carlton vs. Sawyer	Bond Forfeiture	Monroe	Circuit	Closed ...	366
Carlton vs. Simmons	Tax Adjustment	Hardee	Circuit	Pending..	666
Carrigan Miller Co. vs. Sholtz et al.	Injunction	Leon	Circuit	Pending..	759
Chaille et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed ...	597
C. H. & N. Ry. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	172
Child vs. Gray	Injunction	Leon	Circuit	Closed ...	689
City Jacksonville vs. Cahoon	Injunction	Duval	Circuit	Closed ...	485
City Miami vs. Lee, Compt.	Injunction	Dade	Circuit	Closed ...	494
City Panama City vs. Pledger Clk.	Injunction	Bay	Circuit	Pending..	802
City Winter Haven vs. Kennedy	Foreclosure	Polk	Circuit	Pending..	776
City Winter Haven L. E. Groves Inc.	Accounting	Polk	Circuit	Pending..	536
Clark vs. First Trust Co. et al.	Foreclosure	Sarasota	Circuit	Pending..	579
Clifton, In Re	Disbarment	Leon	Supreme	Closed ...	596
Coen vs. Lee, Compt.	Injunction	Highlands	Circuit	Pending..	570
Collier vs. Gray	Injunction	Leon	Circuit	Closed ...	755

Cooper vs. Duncan	Tax Certificate	Indian River	Circuit	Pending..	770
Cooper Truck Line vs. S. R. Dept.	Injunction	Leon	Circuit	Closed ...	461
County Volusia vs. Sou. Surety Co.	Accounting	Manatee	Circuit	Closed ...	428
Dade County Security Co., In Re:	Liquidation	Leon	Circuit	Closed ...	527
Deering et al. vs. Henderson et al.	Cancellation of Sale	Dade	Circuit	Pending..	409
Davis vs. Knott et al.	Injunction	Leon	Circuit	Closed ...	302
Davis et al. vs. Bryan et al.	Foreclosure	Hillsborough	Circuit	Pending..	291
Daugherty vs. Raulerson et al.	Tax Certificate	Polk	Circuit	Pending..	327
E. & W. Coast Ry. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	173
Exchange Natl. Bank vs. O. C. G. Assn.	Accounting	Lake	Circuit	Closed ...	733
Farrow et al. vs. Hodges et al.	Injunction	Sou. Dist.	U. S.	Closed ...	667
Fed. Res. Bank vs. Calhoun et al.	Foreclosure	Taylor	Circuit	Pending..	350
Fenno vs. Amos, Compt.	Injunction	Palm Beach	Circuit	Closed ...	361 1/2
First Trust Co., vs. Simpson	Injunction	Dade	Circuit	Pending..	659
Fla. Adirondack School vs. Lummus	Injunction	Dade	Circuit	Pending..	603
F. E. C. Ry. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	288
Fla. Grapefruit Growers vs. Mayo	Injunction	Polk	Circuit	Pending..	533
Fla. W. & N. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	174
Ft. Lauderdale R. Co. vs. Ft. Lauderdale					
Bank & Trust Co.	Accounting	Broward	Circuit	Closed ...	248
Gay vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed ...	534
Greenleaf & Crosby vs. Coleman	Injunction	Dade	Circuit	Pending..	647
Green vs. Murray et al.	Will	Duval	Circuit	Pending..	769
Grier vs. Lee, Compt.	Inheritance Tax	Volusia	Circuit	Closed ...	704
Groveland Mill Corp. vs. Williams	Injunction	Sou. Dist.	U. S.	Closed ...	783
Gillespie et al. vs. Knott et al.	Injunction	Bay	Circuit	Pending..	573
Gillespie et al. vs. Sholtz et al.	Injunction	Pasco	Circuit	Pending..	565
Gleason et al. vs. Goode	Injunction	St. Johns	Circuit	Pending..	785
Graves Inv. Co. vs. Marion Mtg. Co.	Foreclosure	Dade	Circuit	Closed ...	486
Guarantee Trust Co. vs. S. A. L. Ry.	Intervention	Sou. Dist.	U. S.	Closed ...	511

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

42

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Guaranty Trust Co. vs. S. A. L. Ry.	Injunction	Sou. Dist.	U. S.	Pending..	682
Hackney vs. McKenney	Injunction	Orange	Circuit	Closed ...	520
Haines vs. Sholtz, et al.	Injunction	Leon	Circuit	Closed ...	584
Haley & Co. vs. McKenney	Injunction	Orange	Circuit	Pending..	690
Hall vs. Hecht et al.	Tax Deed	Dade	Circuit	Closed ...	410
Hampton vs. Matheson	Ex. Trust	Dade	Circuit	Pending..	585
Hathaway, deceased	Disp. Estate	Hardee	Co. Judge ...	Pending..	253
Hefty vs. Ranger Realty Co. et al.	Injunction	Dade	Circuit	Closed ...	391
Hershey Corp. vs. Becker	Injunction	Dade	Circuit	Pending..	741
Hershey Corp. vs. Simpson	Injunction	Sou. Dist.	U. S.	Closed ...	654
Hill vs. Trustee I. I. Fund	Foreclosure	Pinellas	Circuit	Closed ...	411
Hoff vs. Waters et al.	Foreclosure	Duval	Circuit	Closed ...	332
Jacksonville Gas Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	459
Jacksonville Gas Co., vs. Lee, Compt.	Injunction	Leon	Circuit	Closed ...	490
Johnson vs. Carlton	Judgment Bond	Hillsborough	Circuit	Closed ...	230
Kelly vs. Knott et al.	Injunction	Leon	Circuit	Pending..	489
Kenan et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed ...	604
Kennedy vs. Saunders	Injunction	Dade	Circuit	Closed ...	413
Kissimmee River Ry. Co., vs. Amos	Injunction	Leon	Circuit	Pending..	175
Knight vs. Knott	Injunction	Sou. Dist.	U. S.	Closed ...	538
Knott vs. Citizens Bank	Accounting	Citrus	Circuit	Pending..	266½
Knott vs. Indp. Indemnity Co.	Injunction	Leon	Circuit	Closed ...	519
Knott vs. Natl. Surety Co.	Receivership	Leon	Circuit	Closed ...	542
Knott vs. Our Home Life Ins. Co.	Receivership	Leon	Circuit	Pending..	501
Lamar et al vs. Anderson et al	Trusteeship	St. Johns	Circuit	Closed ...	390

Lauderdale Harbors Inc. vs. Cape Cod Realty Co. et al	Injunction	Broward	Circuit	Pending..	414
Lee vs. Amos, Compt.	Declaratory Decree ..	Leon	Circuit	Closed ...	465
Leonardy vs. Sweat	Habeas Corpus	Leon	Supreme	Closed	592
Lichthardt vs. Fishiman et al	Spec. Perf.	Hendry	Circuit	Pending..	415
Liggett vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	370
London Operating Co. vs. Pub. Ind. Co.	Receivership	Leon	Circuit	Pending..	505
London Operating Co. vs. N. J. Fidelity & Plate Glass Co.	Injunction	Leon	Circuit	Pending..	506
Lowry vs. Knott	Receivership	Leon	Circuit	Pending..	517
Lurton Co. vs. Wentworth	Injunction	Escambia	Circuit	Closed	630
McAllister vs. O'Bannon	Injunction	Palm Beach	Circuit	Pending..	264
McAllister Realty Co. vs. O'Bannon	Injunction	Palm Beach	Circuit	Pending..	264
McCalley vs. Halsema	Foreclosure	Duval	Circuit	Closed	322
McCalley vs. Hamler et al.	Foreclosure	Duval	Circuit	Pending..	323
McCalley vs. Hamler et al.	Foreclosure	Duval	Circuit	Pending..	324
McCord vs. Sholtz et al.	Injunction	Leon	Circuit	Closed	564
McDonald's Dairy vs. Mayo	Injunction	Alachua	Circuit	Closed	523
McDonal vs. Hunter	Habeas Corpus	Leon	Circuit	Closed	558
McDonald vs. Mayo	Injunction	Alachua	Circuit	Closed	539
McNee vs. Wall	Injunction	Nor. Dist.	U. S.	Pending..	528
Mathews vs. Mayo	Injunction	Leon	Circuit	Closed	372
Maurer vs. Intn. Re-Ins. Corp.	Intervention	Dade	Circuit	Closed	508
Mershop Prop. Inc. vs. N. Inv. Co.	Injunction	Dade	Circuit	Closed	447
Metropolis Pub. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending..	780
Miami Military Academy vs. Lummus	Tax Certificate	Dade	Circuit	Pending..	491
Miami Transit Co. vs. Amos	Injunction	Dade	Circuit	Closed	233
Miller vs. Lee, Compt.	Foreclosure	Dade	Circuit	Pending..	793
Moore vs. Branch	Injunction	Sou. Dist.	U. S.	Closed	591
Moore vs. Sholtz et al.	Injunction	Leon	Circuit	Closed	583

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

44

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Mortgage Co. vs. Bond and Mtg. Co.	Foreclosure	Duval	Circuit	Closed	493
Moss vs. Gray	Injunction	Leon	Circuit	Closed	669
National Trucking Co. vs. Harrell	Injunction	Washington	Circuit	Closed	553
Nunn vs. St. Johns River Conference	Mandamus	Duval	Circuit	Pending	732
Ormond Beach Bond & Mtg. Co. vs. Mickle	Dec. Trust	Volusia	Circuit	Closed	374
Palbicke vs. Amos, Compt.	Tax Certificate	Leon	Circuit	Pending	469
Palm Beach Co. vs. Binion	Foreclosure	Palm Beach	Circuit	Closed	504
Peacock vs. Knott, Ins. Com'rtal	Receivership	Leon	Circuit	Pending	516
Poekel vs. Dowling	Foreclosure	Clay	Circuit	Pending	530
Pope vs. Blanton	Injunction	Nor. Dist.	U. S.	Pending	679
Pound vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	567
Powell vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	463
Powell vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	595
Powell vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	595-a
Powell vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	595-b
Powell vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	653
Protane Corp. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	688
Protane Corp. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	748
Quirk vs. Board Bond Trustees	Injunction	Leon	Circuit	Closed	405
Quirk vs. Carlton, et al.	Injunction	Leon	Circuit	Closed	440
Ragan vs. Peacock	Injunction	Sarasota	Circuit	Closed	524
Ransom vs. Lummis, et al.	Injunction	Dade	Circuit	Pending	397
R. C. B. Corp. vs. Lee, Compt.	Tax Certificate	Dade	Circuit	Pending	681
Rembrant Corp. vs. Strohmeier	Intervention	Sarasota	Circuit	Pending	663
Romilems, Inc. vs. Ranger Realty Co.	Injunction	Dade	Circuit	Closed	455

Rorick et al vs. Board Com'rs Everglades Drainage Dist.	Injunction	Nor. Dist.	U. S.	Pending..	385
S. A. L. Ry. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	176
S. A. L. Ry Co. vs Amos, Compt.	Injunction	Leon	Circuit	Pending..	269
Seymour vs. Sholtz	Injunction	Leon	Circuit	Closed ..	510
Shaw vs. Hecht	Injunction	Dade	Circuit	Pending..	417
Sherrill Oil Co. vs. Harrell	Injunction	Washington	Circuit	Closed ..	554
Sheiff vs. Crabtree	Foreclosure	Palm Beach	Circuit	Closed ..	589
Simmons vs. Lee, Compt.	Mandamus	Leon	Supreme	Pending..	811
Sirocco Co. vs. Reed, et al.	Quiet Title	Dade	Circuit	Pending..	462
Sloan vs. Wisecarver	Injunction	Dade	Circuit	Closed ..	419
Smith vs. Knott	Receivership	Leon	Circuit	Pending..	507
Smith vs. Lee, Compt.	Injunction	Leon	Circuit	Closed ..	498
Smith vs. Lee, Compt.	Injunction	Leon	Circuit	Closed ..	535
Solla vs. McNair	Receivership	Sou. Dist.	U. S.	Closed ..	279
Somerset Co. vs. Hecht, et al.	Injunction	Dade	Circuit	Closed ..	418
Somerset Co. vs. Hecht, et al.	Injunction	Dade	Circuit	Closed ..	422
Sou. Real Estate Corp. vs. Goode	Injunction	Sou. Dist.	U. S.	Closed ..	328
Spaulding vs. Ott, et al.	Foreclosure	Dade	Circuit	Closed ..	540
Spence vs. Lee, Compt.	Foreclosure	Pinellas	Circuit	Closed ..	515
Squire vs. Amos, Compt.	Tax Certificate	Leon	Circuit	Pending..	466
Srael & Jabaly, Inc., vs. Lee, Compt.	Injunction	Leon	Circuit	Pending..	675
STATE EX REL:					
Alford Bros. vs. Tiller	Mandamus	Washington	Circuit	Closed ..	581
Ake vs. Broward Co. Port Author.	Mandamus	Leon	Supreme	Closed ..	458
Alenick vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed ..	640
Allen vs. Pinellas County	Mandamus	Leon	Supreme	Closed ..	618
Allen vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	705
Andrews vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	662
Andrews vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	789
Asbel vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending..	616

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

46

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Barnes vs. Sholtz, et al.	Mandamus	Hardee	Circuit	Closed	660
Barnett Natl. Bank vs. Smith	Mandamus	Brevard	Circuit	Pending	606
Barton vs. Racing Commission	Mandamus	Leon	Supreme	Closed	762
Baynes vs. Sholtz, et al.	Mandamus	St. Lucie	Circuit	Pending	691
Beasley vs. Cahoon	Habeas Corpus	Duval	Circuit	Closed	133
Ben Hur Life Ass'n vs. Binney	Mandamus	Leon	Supreme	Closed	574
Ben Hur Life Ass'n vs. Porter	Mandamus	Monroe	Circuit	Closed	619
Ben Hur Life Ass'n vs. Atl. Spl. Rd. & Bdg. Dist.	Mandamus	Indian River	Circuit	Closed	620
Ben Hur Life Ass'n vs. Union Co.	Mandamus	Union	Circuit	Pending	621
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	702
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	710
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	713
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	716
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	717
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Osceola	Circuit	Pending	771
Ben Hur Life Ass'n vs. Bd. Trustees	Mandamus	Indian River	Circuit	Pending	772
Ben Hur Life Ass'n vs. Martin Co.	Mandamus	Manatee	Circuit	Pending	777
Ben Hur Life Ass'n vs. Union Co.	Mandamus	Union	Circuit	Pending	778
Ben Hur Life Ass'n vs. Charlotte Co.	Mandamus	Charlotte	Circuit	Pending	779
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	805
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	806
Ben Hur Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	807
Board Commissioners Everglades Drainage Dist. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	562
Bridges vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	798

Brooks vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	658
Broward Bank & Trust Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	731
Buckingham vs. Moody	Mandamus	Indian River	Circuit	Closed ..	548
Bullard vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	593
Burns vs. Peacock	Mandamus	Sarasota	Circuit	Closed ..	547
Center vs. Sholtz, et al.	Injunction	Leon	Supreme	Pending..	582
Central Farmers Trust Co. vs. Monroe Co.	Mandamus	Leon	Circuit	Pending..	622
Chalmers vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	787
Chalmers vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	788
Chalmers vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	790
Chalmers vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	791
Clark Printing Co. vs. Lee, Compt.	Mandamus	Leon	Supreme	Pending..	709
Cowling vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	797
Crane vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	763
Crane vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	801
Crosby vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	794
Dade Kennel Club vs. Racing Commission.	Mandamus	Leon	Supreme	Closed ..	701
Dannenburg vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	774
Davis vs. Carleton, et al.	Mandamus	Leon	Supreme	Closed ..	393
Davis vs. Lee, Compt., et al.	Mandamus	Leon	Supreme	Pending..	602
Davis vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	742
Davis vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	743
Davis vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	744
Davis vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	745
Davis vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	809
Deeb vs. Ausley, et al.	Mandamus	Leon	Supreme	Closed ..	756
DeSoto Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	729
Dickson vs. Sholtz, et al.	Mandamus	DeSoto	Circuit	Closed ..	753
Dickson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	799
Dickson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	800
Dowling, et al. vs. Butts	Mandamus	Leon	Circuit	Closed ..	525

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

48

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Docket Page
Dunwody vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	734
Dunwody vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	784
DuPont-Ball, Inc. vs. Carlton, et al.	Mandamus	Leon	Supreme	Closed	438
Elston Bank & Trust Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	720
Elston Bank & Trust Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	721
Elston Bank & Trust Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	725
Estate of Massey vs. Burnside	Mandamus	Pasco	Circuit	Closed	607
Fee & Liddon Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	712
Fidelity Life Ass'n vs. Ft. Pierce Port Dist.	Mandamus	St. Lucie	Circuit	Closed	775
Fidelity Life Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	761
First State Savings Bank vs. Spl. Rd. & Bdg. Dist., Hardee Co.	Mandamus	Hardee	Circuit	Closed	426
Florida Natl. Bank vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	586
Florida Natl. Bank vs. Pinellas Co.	Mandamus	Leon	Supreme	Pending..	623
Getzen vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending..	566
Gillespie, et al. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	492
Gillespie vs. Ocean Shore Imp. Dist.	Mandamus	Leon	Circuit	Pending..	626
Gillespie vs. Citrus County, et al.	Mandamus	Leon	Circuit	Pending..	627
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	637
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	642
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	644
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	692
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	736
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	750
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	766
Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	810

Gillespie vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	812
Glenn Curtis, Prop., vs. Leatherman	Mandamus	Dade	Circuit	Closed	609
Handler vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	638
Harris vs. Bowden	Mandamus	Duval	Supreme	Closed	552
Hart vs. Price	Mandamus	Duval	Circuit	Closed	657
Highlands Co. vs. Amos, Compt.	Mandamus	Leon	Circuit	Pending	124
Holgate Inv. Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	670
Holgate Inv. Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	673
Hosea vs. Knott	Mandamus	Leon	Supreme	Closed	676
Houston vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending	700
Hunter vs. O'Quinn	Mandamus	Leon	Supreme	Closed	601
Jacksonville Gas Co. vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	521
Jackson vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	529
Jackson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	786
Johnston, et al vs. Sholtz, et al.	Mandamus	Leon	Supreme	Closed	664
Lesser vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	671
Lively vs. Collins	Mandamus	Leon	Circuit	Closed	804
Lowe vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	652
Lyle vs. Howell, et al.	Mandamus	Leon	Supreme	Closed	532
Lyman vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	723
Lyman vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	724
Lyman vs. Wall, et al.	Mandamus	Leon	Circuit	Pending	751
Lyman vs. Wall, et al.	Mandamus	Leon	Circuit	Pending	752
Lyman vs. Wall, et al.	Mandamus	Martin	Circuit	Pending	767
Lyman vs. Wall, et al.	Mandamus	Martin	Circuit	Pending	768
Lynn vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	718
McEwen vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	722
McCollum vs. Moye	Mandamus	DeSoto	Circuit	Closed	549
McKenney vs. Gay	Mandamus	Orange	Circuit	Closed	598
Manatee Co. Bldg. & Loan Ass'n vs. Crawford	Mandamus	Leon	Circuit	Pending	119
Massey vs. Board Admr.	Mandamus	Leon	Circuit	Pending	773

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

50

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Docket Page
Mittendorf vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	764
Mohr vs. Lee, Compt.	Mandamus	Leon	Circuit	Pending..	677
Moraine vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ...	758
Morgan vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ...	672
Morrison vs. Cawthon	Mandamus	Leon	Circuit	Pending..	651
Mosteller vs. Gay	Mandamus	Leon	Supreme	Closed ...	551
Municipal Bond & Inv. Co. vs. Knott, et al.	Mandamus	Leon	Supreme	Closed ...	575
Natl. Surety Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	698
Natl. Surety Co. vs. Sholtz, et al.	Mandamus	Indian River	Circuit	Closed ...	696
Nelson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	645
Nelson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	656
Nelson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	719
Newberry vs. Harris, et al.	Mandamus	Pinellas	Circuit	Pending..	646
Nunnally vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	633
Orrell vs. Johnson, et al.	Mandamus	Leon	Supreme	Closed ...	424
Padgett vs. Trammell, et al.	Prohibition	Leon	Supreme	Closed ...	499
Parker vs. Lee, Compt.	Mandamus	Leon	Circuit	Closed ...	563
Parkwood, Inc. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	674
Pelot vs. Sholtz, et al.	Mandamus	DeSoto	Circuit	Pending..	711
Pelot vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	813
Peninsular Dist. Corp. vs. Culbreath	Mandamus	Leon	Supreme	Pending..	803
Pierce Biese Corp. vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending..	605
Pierce Biese Corp. vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending..	792
Pinellas Co. vs. Sholtz, et al.	Mandamus	Leon	Supreme	Closed ...	631
Pinellas Kennel Club vs. Racing Com.	Mandamus	Leon	Supreme	Closed ...	703
Preston vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	754

Preston vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	781
Rembrant Corp. vs. Thomas	Mandamus	Leon	Circuit	Closed ..	765
Robinson vs. Keefe, et al.	Mandamus	Leon	Supreme	Closed ..	522
Rogers, et al. vs. Sweat	Habeas Corpus	Duval	Supreme	Closed ..	561
St. Geo. Alexandrine Co. vs. O'Quinn	Mandamus	Pinellas	Circuit	Closed ..	559
Security Benefit Ass'n vs. Sholtz	Mandamus	Leon	Circuit	Pending..	708
Security Benefit Ass'n vs. Jovenal	Mandamus	Leon	Circuit	Pending..	746
Security Benefit Ass'n vs. Sholtz	Mandamus	Leon	Circuit	Pending..	808
Sells vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	796
Sharpe vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed ..	678
Simpson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	643
Simpson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	728
Slipp vs. Bandy	Mandamus	Osceola	Circuit	Closed ..	544
Smith vs. Butts	Mandamus	Leon	Circuit	Closed ..	526
Smith vs. Hull, et al.	Mandamus	DeSoto	Circuit	Closed ..	599
Smith vs. Ocean Shore Imp. Dist.	Mandamus	Leon	Circuit	Pending..	625
Smith vs. Monroe County, et al.	Mandamus	Leon	Circuit	Pending..	628
Smith vs. Pinellas County	Mandamus	Leon	Circuit	Pending..	629
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	635
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	636
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	737
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	738
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	739
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	740
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	655
Smith vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	757
Somermeir vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	634
Sou. Life & Health Ins. Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	639
Sovereign Camp W. O. W. vs. Harris, et al.	Mandamus	Pinellas	Circuit	Pending..	632
Sovereign Camp W. O. W. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	706
Sovereign Camp W. O. W. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending..	714

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

52

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Docket Page
Stringfellow vs. Dykes	Mandamus	Lake	Circuit	Closed	571
Suwannee River Bridge vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending	568
Tanger Inv. Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	730
Tanger Inv. Co. vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	749
Thompson vs. Lott	Mandamus	St. Lucie	Circuit	Closed	569
Traders Indemnity Co. vs. Knott	Mandamus	Leon	Supreme	Closed	496
Vetter vs. Knott	Mandamus	Leon	Supreme	Closed	556
Walker vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	782
Wall vs. Sholtz, et al.	Mandamus	Leon	Supreme	Pending	747
West Lake Inv. Co. vs. Bennett	Mandamus	Leon	Supreme	Closed	580
Williams vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	715
Williams vs. Sholtz, et al.	Mandamus	St. Lucie	Circuit	Closed	693
Williams vs. Sholtz, et al.	Mandamus	St. Lucie	Circuit	Closed	694
Williams vs. Sholtz, et al.	Mandamus	St. Lucie	Circuit	Closed	695
Williams vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	699
Williams vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	795
Winters vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	686
Winters vs. Sholtz, et al.	Mandamus	Leon	Circuit	Pending	760
Woman's Benefit Ass'n vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	649
State vs. Atlantic Title Co.	Injunction	Palm Beach	Circuit	Closed	560
State vs. Fee and Liddon	Injunction	St. Lucie	Circuit	Closed	617
State vs. Fla. Natl. Bank	Accounting	Duval	Circuit	Pending	326
State vs. Friend	Damages	Hillsborough	C. Ct. Rec.	Pending	361
State et al., vs. Graham	Injunction	Sarasota	Circuit	Pending	495
State vs. Gunn	Damages	Hillsborough	C. Ct. Rec.	Closed	364
State vs. Hendry, et al.	Foreclosure	Hillsborough	U. S.	Closed	435

State vs. Lester	Damages	Hillsborough	C. Ct. Rec. ..	Pending..	362
State vs. McLaughlin, et al.	Foreclosure	Hillsborough	U. S.	Closed ..	434
State vs. Minge, et al.	Mandamus	Duval	Circuit	Pending..	577
State vs. Roberson, et al.	Foreclosure	Hillsborough	U. S.	Closed ..	433
State vs. Watkins	Damages	Hillsborough	C. Ct. Rec. ..	Closed ..	363
State vs. Williams	Damages	Hillsborough	C. Ct. Rec. ..	Closed ..	365
Sumter County, In Re:	Bankruptcy	Sou. Dist.	U. S.	Pending..	697
Sumter County vs. Sholtz, et al.	Injunction	Leon	Circuit	Closed ..	510
Sutton vs. State Bd. Education	Injunction	Sou. Dist.	U. S.	Closed ..	103
Tabard Press vs. Fla. Pen. Hotel	Intervention	Sou. Dist.	U. S.	Pending..	587
Tabard Press vs. Fla.-Collier Coast Hotels...	Intervention	Sou. Dist.	U. S.	Pending..	661
Tampa & Gulf Coast R. vs. Amos, Compt....	Injunction	Leon	Circuit	Pending..	177
Tampa No. R. R. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	178
Tavares & Gulf R. R. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending..	179
Trammell vs. DeLeon Naval Stores	Mandamus	Leon	Circuit	Pending..	2
Trout vs. Loche, et al.	Quiet Title	Dade	Circuit	Pending..	727
Trustees I. I. Fund vs. McCaskill	Foreclosure	Palm Beach	Circuit	Closed ..	484
Turpentine & Rosin Factors vs. Sweat	Injunction	Duval	Circuit	Closed ..	531
U. S. ex rel. Ben Hur Life Ass'n vs. Mon- roe Co.	Mandamus	Sou. Dist.	U. S.	Pending..	684
U. S. ex rel. Ben Hur Life Ass'n. vs. Okee- chobee Co.	Mandamus	Sou. Dist.	U. S.	Pending..	683
U. S. ex rel. Ben Hur Life Ass'n vs. Bond Trustees	Mandamus	Sou. Dist.	U. S.	Pending..	685
U. S. ex rel. Guaranty State Bank vs. Okee- chobee County	Mandamus	Duval	U. S.	Closed ..	576
U. S. ex rel. Municipal Securities Corp. vs. Sholtz, et al.	Mandamus	Bay	U. S.	Pending..	513
U. S. ex rel. Rorick vs. Knott (2 suits)	Mandamus	Leon	U. S.	Pending..	437
United Land Co. vs. Warren, et al.	Injunction	Indian River	Circuit	Closed ..	512
VanSchoick vs. Knott, et al.	Receivership	Leon	Circuit	Pending..	509

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

Style	Action	County	Court	Status	Docket Page
VanSchoick vs. Knott, et al.	Injunction	Leon	Circuit	Pending..	497
Wadsworth vs. Brown	Mandamus	Flagler	Circuit	Pending..	641
Wauchula State Bank vs. Carlton	Injunction	Hardee	Circuit	Pending..	735
Wieschold vs. Mayo, et al.	Injunction	Duval	Circuit	Closed	648
Willis vs. Carson	Mandamus	DeSoto	Circuit	Closed	545
Winthrop vs. Gray	Injunction	Leon	Circuit	Closed	668
Wolyn vs. A. N. R. R. Co.	Damages	Liberty	Circuit	Pending..	70
Woolsey vs. Amos, Compt.	Injunction	Highlands	Circuit	Pending..	217
Wyman, Green & Gilmore vs. Trustees I. I. Fund, et al.	Mandamus	Manatee	Circuit	Pending..	421

XII. TABULATED REPORT OF CRIMINAL CASES

**Handled by the Attorney General in Which Opinions Were Filed by the Supreme Court
During the Years 1933-1934**

CASES DISPOSED OF DURING JANUARY TERM 1933

Name of Offender	Offense	County	Court	Disposition
Perry Acree	Habeas Corpus	Polk	Circuit	Remanded
Herman A. Allen	Robbery, Armed	Hillsborough ..	Criminal	Reversed
Jim Amos	Habeas Corpus	LaFayette	Circuit	Remanded
J. C. Anderson	Habeas Corpus	Union	Circuit	Remanded
J. C. Anderson	Habeas Corpus	Union	Circuit	Affirmed
M. S. Beasley	Violation Small Loan Act	Duval	Circuit	Affirmed
Willie Berry	Murder, 2nd Degree	Jackson	Circuit	Affirmed
Ernest Bryan	Robbery, Armed	Dade	Criminal	Affirmed
J. W. Buchanan	Habeas Corpus	Union	Circuit	Affirmed
J. W. Buchanan	Habeas Corpus—Rehearing	Union	Circuit	Denied
Ernest Carlton	Breaking and Entering	Hillsborough ..	Criminal	Reversed
C. B. Casey	Murder, 1st Degree	Union	Circuit	Dismissed
Joseph Council	Assault to Murder	Suwannee	Circuit	Reversed
Elbert Croft	Robbery	Pinellas	Circuit	Reversed
Woodrow Cribbs	Habeas Corpus	Hillsborough ..	Criminal	Remanded
Arthur R. Coulson	Violation Liquor Law	Walton	Circuit	Reversed
Arthur R. Coulson	Violation Liquor Law	Walton	Circuit	Reversed
Angelo D'Alessandro	Habeas Corpus	Lee	Circuit	Affirmed
Geo. Deeb	Habeas Corpus	Escambia	Circuit	Bailed

CASES DISPOSED OF DURING JANUARY TERM 1933—(Continued)

56

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
B. W. Dyess	Habeas Corpus	Highlands	Circuit	Remanded
Wm. Y. Ferris, et al.	Habeas Corpus	Hernando	Circuit	Remanded
Paul Fitzgerald	Habeas Corpus	Dade	Circuit	Affirmed
Vennie Fowler	Murder, 2nd Degree	Gulf	Circuit	Affirmed
Leo Fritz	Kidnaping and Aggrav. Assault ..	Dade	Criminal	Dismissed
H. B. Gear	Habeas Corpus	Dade	Circuit	Affirmed
Irwin Goff	Desertion	Suwannee	Circuit	Affirmed
Walter E. Harrison	Murder, 1st Degree	Bay	Circuit	Affirmed
Norman J. W. Hepburn	Habeas Corpus	Union	Circuit	Remanded
Willie Hill	Habeas Corpus	Leon	Circuit	Remanded
J. A. Skipper and J. M. Jannett	Violation Small Loan Act	Dade	Circuit	Affirmed
E. E. Jeffcoat	Habeas Corpus	Union	Circuit	Affirmed
E. E. Jeffcoat	Habeas Corpus	Union	Circuit	Affirmed
E. E. Jeffcoat	Habeas Corpus	Union	Circuit	Pet. Denied
Perry Johns	Grand Larceny	Bradford	Circuit	Reversed
Claud Jones	Manslaughter	Baker	Circuit	Dismissed
John Kirk	Habeas Corpus	Wakulla	Circuit	Pet. Remand.
Elmo Kitts	Habeas Corpus	Hillsborough ..	Juvenile	Pet. Disch'ged
Louis Leavine	Murder, 1st Degree	Hillsborough ..	Circuit	Affirmed
Carlos Lezama et al.	Assault to Murder	Hillsborough ..	Circuit	Reversed
Archibald Livingston	Misapplication of Funds	Madison	Criminal	Reversed
P. L. Love	Arson	Osceola	Circuit	Reversed
Claude McDowell	Rape	Volusia	Circuit	Affirmed
W. F. Mauk	Embezzlement	Hernando	Circuit	Reversed
Ira G. Melson	Prohibition	Duval	Criminal	Quashed
T. O. Mercer	Habeas Corpus	Sarasota	Circuit	Dismissed

James Milligan	Murder, 1st Degree	Dade	Circuit	Affirmed
A. B. Morris	Certiorari	Okaloosa	Circuit	Affirmed
Isaac Mungin	Robbery, Armed	Dade	Circuit	Affirmed
Ed. Murphy	Murder, 1st Degree	Collier	Circuit	Affirmed
Forrest Norris	Aggravated Assault	Columbia	Circuit	Reversed
H. C. Packard	Habeas Corpus	Duval	Circuit	Affirmed
Roy Parker	Certiorari	Okaloosa	Circuit	Affirmed
Richard Amos et al.	Robbery, Armed	Hillsborough	Criminal	Affirmed
B. L. Roach	Robbery, Armed	Dade	Criminal	Affirmed
Bob Rogers	Robbery, Armed	Dade	Criminal	Affirmed
L. K. Riley	Habeas Corpus	Escambia	Ct. Rec.	Pet. Disch'ged
James Smith	Certiorari	Okaloosa	Circuit	Affirmed
John Stansell	Murder, 2nd Degree	Columbia	Circuit	Affirmed
J. F. Stubbs	Habeas Corpus	Union	Circuit	Pet. Remand.
C. E. Thompson	Manslaughter	Duval	Criminal	Reversed
R. S. Torr	Larceny	Dade	Criminal	Reversed
P. W. Waterbury	Rape	Dade	Circuit	Affirmed
David Weimorts	Embezzlement	Walton	Circuit	Affirmed
Frank Williams	Habeas Corpus	Walton	Circuit	Remanded

CASES DISPOSED OF DURING JUNE TERM, 1933

Name of Offender	Offense	County	Court	Disposition
Perry Acree	Habeas Corpus	Polk	Circuit	Discharged
Perry Acree	Murder, st Degree	Polk	Circuit	Reversed
J. W. Albritton	Assault With Intent to Commit Manslaughter	Hardee	Circuit	Affirmed
William Frank Alderman	Embezzlement	Hillsborough	Criminal	Reversed
Ralph Allen	Assault to Murder	Santa Rosa	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM 1933—(Continued)

58

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
William Lee Berry	Grand Larceny	Gulf.....	Circuit.....	Dismissed
S. D. Callaway	Bribery	Dade.....	Circuit.....	Affirmed
Ernest Carlton	Breaking and Entering	Hillsborough.....	Circuit.....	Affirmed
Isaah Chambers	Murder, 1st Degree	Broward.....	Circuit.....	Affirmed
Thomas Chessser, et al	Manslaughter	Clay	Circuit.....	Affirmed
Gus Cheshire	Breaking and Entering	Escambia.....	Circuit.....	Dismissed
Joseph Council	Assault to Murder	Suwannee.....	Circuit.....	Reversed
G. W. Courson	Manslaughter	Duval.....	Circuit.....	Reversed
F. G. Craig	Possession Lottery Tickets	Pinellas.....	Circuit.....	Reversed
Louie Cruenton, et al. ....	.....	Walton.....	Circuit.....	Dismissed
Albert Darlow .....	.....	Dade.....	Circuit.....	Dismissed
Jimmy Duff, et al.	Breaking and Entering	Dade.....	Criminal.....	Dismissed
W. B. Dyess	Maintaining Gambling House	Highlands.....	Circuit.....	Affirmed
Louis Fekany	Desertion	Orange.....	Circuit.....	Reversed
Young Ferris	Habeas Corpus	Hillsborough.....	Criminal.....	Remanded
Arnold Fesser	Robbery	Hillsborough.....	Criminal.....	Reversed
S. S. Fix	Habeas Corpus	Polk	Circuit.....	Affirmed
Vennie Fowler	Murder, 2nd Degree	Gulf.....	Circuit.....	Affirmed
Ben Fox	Lottery	Dade.....	Criminal.....	Reversed
Irvin Goff	Desertion	Suwannee.....	Circuit.....	Affirmed
Alfonso Gomez	Habeas Corpus	Hillsborough.....	Criminal.....	Remanded
Johnnie Green	Breaking and Entering	Dade.....	Circuit.....	Affirmed
Ray Haag	Desertion	Lake.....	Circuit.....	Reversed
Mose Harris	Murder, 1st Degree	Duval.....	Circuit.....	Affirmed
Joe Haworth	Habeas Corpus	Union.....	Circuit.....	Remanded
N. J. W. Hepburn	Habeas Corpus	Union.....	Circuit.....	Discharged

William Hill	Robbery, Armed	Volusia	Criminal	Affirmed
L. J. Hilliard	Breaking and Entering	Dixie	Circuit	Affirmed
Peter Hogan	Certiorari	Lee	Circuit	Quashed
Sterling Ingram	Habeas Corpus	Walton	Circuit	Remanded
Sterling Ingram	Arson	Walton	Circuit	Remanded
J. M. Janett, et al.	Habeas Corpus	D. of C.	U. S. Su.	Affirmed
Bill Johns	Robbery, Armed	Volusia	Criminal	Affirmed
Joseph E. Johnston	Murder, 1st Degree	Hillsborough	Circuit	Remanded
Sylvester Johnson	Assault to Rape	Dade	Circuit	Reversed
Thos. J. Johnson	Murder, 1st Degree	Hillsborough	Circuit	Reversed
Nathanial Kelly, et al.	Robbery	Escambia	Ct. of Rec.	Affirmed
John Key	Assault and Battery	Okaloosa	Circuit	Affirmed
Forest Lake	Habeas Corpus	Union	Circuit	Reversed
Homer Langford	Violation Liquor Law	Walton	Circuit	Reversed
J. W. Larramore	Murder 1st Degree	Union	Circuit	Affirmed
J. W. Larramore	Certiorari		U. S. Su.	Denied
E. J. Lewis	Habeas Corpus	Pinellas	Circuit	Affirmed
Harry Lewis	Withholding Support Minor	Suwannee	Circuit	Affirmed
Louis Levene	Coram Nobis	Hillsborough	Circuit	Denied
J. D. Luckett	Stealing	Lee	Circuit	Affirmed
Roland Malone	Robbery	Escambia	Circuit	Dismissed
J. T. McBrayer	Non-support Wife and Child	Manatee	Circuit	Reversed
Luke McCall	Manslaughter	Madison	Circuit	Affirmed
Leo McDonald	Habeas Corpus	Hamilton	Circuit	Remanded
Steve Mitchem		Walton	Circuit	Dismissed
Clyde Morgan, et al.	Assault and Battery	Bradford	Circuit	Affirmed
Robert Nelson	Habeas Corpus	Leon	Supreme	Discharged
J. O. O'Dell	Habeas Corpus	Volusia	Circuit	Affirmed
Melvin Owens, et al.	Manslaughter	Clay	Circuit	Affirmed
Smith Perkins, et al.	Robbery	Escambia	Ct. of Rec.	Affirmed
J. D. Pool	Stealing	Lee	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM 1933—(Continued)

60

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
Altha Prater	Assault to Murder	Walton	Circuit	Affirmed
Richard Ramos, et al.	Robbery, Armed	Hillsborough ..	Criminal	Affirmed
Frieda J. Riley	Breaking and Entering	Dade	Circuit	Dismissed
Geo. L. Roberson	Habeas Corpus	Hamilton	Circuit	Affirmed
Walter Roundtree	Murder, 1st Degree	Duval	Circuit	Reversed
Aaron Ryals, et al.	Manslaughter	Duval	Circuit	Reversed
Walter Scott (2 cases)	Breaking and Entering	Dade	Circuit	Affirmed
John M. Sheehy	Habeas Corpus	Dade	Circuit	Affirmed
W. L. Simmons, et al.	Robbery	Duval	Criminal	Dismissed
Buster Smith, et al.	Robbery	Duval	Criminal	Dismissed
Walter Smith	Manslaughter	Dade	Circuit	Affirmed
W. B. Smith, et al.	Coram Nobis	Duval	Criminal	Denied
J. H. Spero	Murder, 1st Degree	Marion	Circuit	Admtd. Ball
Marshall Stewart	Lottery	Polk	Circuit	Dismissed
Johnnie Taylor	Habeas Corpus	Hillsborough ..	Criminal	Remanded
Neal Tipton	Murder, 2nd Degree	Gulf	Circuit	Affirmed
Lyle Truel, et al. ....	.....	Pinellas	Circuit	Dismissed
Frank Vance	Manslaughter	Dade	Circuit	Affirmed
Omar A. Wilson	Murder, 2nd Degree	Putnam	Circuit	Affirmed
Geo. D. Woodward, et al	Incest	Santa Rosa	Circuit	Reversed

CASES DISPOSED OF DURING JANUARY TERM 1934

Name of Offender	Offense	County	Court	Disposition
Richard Barnes et al.	Certiorari	Pinellas	Circuit	Pet. Denied

Richard Barnes	Usury	Pinellas	Circuit	Dismissed
Willie Berry	Murder, 2nd Degree	Gulf	Circuit	Dismissed
E. E. Blair	Habeas Corpus	Duval	Criminal	Remanded
John Bowman	Murder 2nd Degree	Dade	Criminal	Affirmed
Fito Boza	Carnal Intercourse	Monroe	Criminal	Reversed
Jeff Brock	Robbery	Bay	Circuit	Reversed
Neal M. Brock	Habeas Corpus	Dade	Circuit	Reversed
Tom Brooks	Murder 1st Degree	Indian River	Circuit	Affirmed
Charlie Brown	Manslaughter	Polk	Circuit	Affirmed
Obie Brown	Breaking and Entering	Walton	Circuit	Affirmed
Richard Brown	Habeas Corpus	Duval	Criminal	Remanded
R. J. Burch	Habeas Corpus	Volusia	Circuit	Affirmed
R. J. Burch	Habeas Corpus	Dade	Criminal	Dismissed
S. D. Calloway	Bribery	Dade	Criminal	Rem. New Tr.
Isiah Chambers et al.	Writ of Error Coram Nobis	Broward	Circuit	Pet'r. Denied
James Connell	Habeas Corpus	Taylor	Circuit	Pet'r. R'm'd.
Joe Crosby	Habeas Corpus	Duval	Criminal	Pet'r. R'm'd.
Angelo D'Allessandro	Lottery	Lee	Circuit	Reversed
Harold Davis	Violation Prohibition Law	Lee	Circuit	Reversed
Geo. Deeb	Habeas Corpus	Gadsden	Circuit	Ptr. to Guard.
Eddie Devoe	Habeas Corpus	Duval	Criminal	Pet'r Dischg.
Archie Foy	Breaking and Entering	Sarasota	Circuit	Reversed
Forrest Gant	Larceny	Escambia	Ct. of Rec.	Affirmed
Vincent C. Giblin	Habeas Corpus	Dade	Circuit	Dismissed
Joe Griffith	Certiorari	Walton	Circuit	Quashed
Julius Herring	Manslaughter	Palm Beach	Criminal	Reversed
A. D. Hunt	Breaking and Entering	Orange	Criminal	Dismissed
Martin F. Jarvis	Murder 1st Degree	Sarasota	Circuit	Affirmed
Lew Kay	Manslaughter	Pinellas	Circuit	Affirmed
Earl Kendrick	Leudness	Escambia	Ct. of Rec.	Dismissed

CASES DISPOSED OF DURING JANUARY TERM 1934—(Continued)

62

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
Ray Kirby	Murder 1st Degree	Hillsborough ..	Circuit	Reversed
Ray Kirby	Coram Nobis	Hillsborough ..	Circuit	Dismissed
Edward Lee	Murder 1st Degree	Hillsborough ..	Circuit	Rev. New Tr'l.
T. A. Leonard	Habeas Corpus	Duval	Circuit	Pet'r. Dischg.
A. O. Lynch	Obtaining Money Under False Pre.	Hillsborough ..	Circuit	Dismissed
R. C. Maudlin et al.	Forgery	Dade	Criminal	Remanded
R. C. Maudlin et al.	Habeas Corpus	Dade	Criminal	Rev. R'm'd.
Howard Mitchell	Habeas Corpus	Leon	Supreme	Remanded
Steve Mitchem	Breaking and Entering	Walton	Circuit	Affirmed
T. J. Parrish	Violating Liquor Law	Union	Circuit	Judge for Ste.
Ira Peebles et al.	Breaking and Entering	Dade	Criminal	Affirmed
Reeves M. Ramsey	Murder 2nd Degree	Jackson	Circuit	Reversed
John Reffkin	Habeas Corpus	Union	Circuit	Pet'r R'm'd.
W. S. Robinson	Certiorari	Bay	Circuit	Quashed
William H. Rogers et al.	Habeas Corpus	Duval	Circuit	Pet'r. Dschgd.
Walkene Rolle	Manslaughter	Dade	Criminal	Reversed
C. A. Skipper	Embezzlement	Highlands	Circuit	Affirmed
Hardie Sloan	Habeas Corpus	Union	Circuit	Pet'r. R'm'd.
Hardie Sloan	Maintaining Gambling House	Union	Circuit	Affirmed
W. J. Smith alias Ryals .....	.....	Taylor	Circuit	Dismissed
W. B. Smith et al.	Robbery	Duval	Criminal	Dismissed
Jake Slomon et al.	Operating Gambling House	Dade	Criminal	Reversed
Marshall Stewart	Lottery	Polk	Criminal	Reversed
Frieda Valley et al.	Habeas Corpus	Dade	Criminal	Rev. R'm'd.
Frieda Valley et al.	Forgery	Dade	Criminal	Rev. R'm'd.

CASES DISPOSED OF DURING JANUARY TERM 1934—(Continued)

Name of Offender	Offense	County	Court	Disposition
Will Walker	Possessing Stolen Goods.....	Dade	Criminal	Affirmed
R. P. Watson et al.	Robbery	Duval	Criminal	Dismissed
Willie Welch	Manslaughter	Orange	Criminal	Affirmed
Jimmie Williams	Habeas Corpus	Leon	Circuit	Bet'r. Bail
Roy Wood	Murder 2nd Degree	Escambia	Ct. of Rec.	Affirmed
Roy Wood	Murder 2nd Degree	Escambia	Ct. of Rec.	Re-Affirmed

CASES DISPOSED OF DURING JUNE TERM 1934

Name of Offender	Offense	County	Court	Disposition
Emanuel Allday	Murder, 2nd Degree	Calhoun	Circuit.....	Affirmed
Henry Allen	Breaking and Entering	Pinellas.....	Circuit.....	Reversed
Jimmie Anderson	Forgery	Manatee.....	Circuit.....	Affirmed
W. A. Banks	Larceny	Dade	Criminal.....	Affirmed
Kemp Barbe	Habeas Corpus	Volusia.....	Circuit.....	Affirmed
Geo. Bauer	Murder, 2nd Degree	Escambia.....	Circuit.....	Affirmed
Alfred Beannon	Manslaughter	Walton.....	Circuit.....	Affirmed
Yzanro Benitez	Breaking and Entering	Hillsborough.....	Criminal.....	Dismissed
E. H. Bowles et al. ....	.....	Dade	Circuit.....	Dismissed
Earl H. Bronson	Breaking and Entering	Marion.....	Circuit.....	Reversed
Boss Brown	Lottery	Collier.....	Circuit.....	Affirmed
Josh Browning	Habeas Corpus	Union.....	Circuit.....	Abandoned
Les Bryant	Manslaughter	Polk.....	Circuit.....	Affirmed
Horace Bryant	Receiving Stolen Goods	Duval.....	Criminal.....	Dismissed
Dexter Cawthon	Murder, 2nd Degree	Santa Rosa.....	Circuit.....	Reversed

CASES DISPOSED OF DURING JUNE TERM 1934—(Continued)

64

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
C. D. Casey	Murder, 1st Degree	Dade.....	Circuit.....	Reversed
Isaiah Chambers et al.	Murder, 1st Degree	Broward.....	Circuit.....	Reversed
Isaiah Chambers et al.	Writ of Error Coram Nobis	Broward.....	Circuit.....	Reversed
J. P. I. Chance	Murder, 2nd Degree	Calhoun.....	Circuit.....	Reversed
Carl Collier et al.	Lottery	Lee.....	Circuit.....	Affirmed
Luther Commander	Assault to Murder	Baker.....	Circuit.....	Dismissed
James Conner .....	.....	Dade.....	Criminal.....	Dismissed
Elbert Croft	Robbery While Armed	Osceola.....	Circuit.....	Reversed
Harold Curry	Breaking and Entering	Sarasota.....	Circuit.....	Dismissed
D. J. Davis	Usury	Duval.....	Criminal.....	Dismissed
Angelo D'Allesandro	Perjury	Lee.....	Circuit.....	Reversed
Angelo D'Allesandro	Lottery	Lee.....	Circuit.....	Affirmed
John Diehl	Manslaughter	Dade.....	Criminal.....	Reversed
Gordon Drawdy et al. ....	.....	Sarasota.....	Circuit.....	Dismissed
M. F. Dudley .....	.....	Jackson.....	Circuit.....	Dismissed
Frank Edge .....	.....	Walton.....	Circuit.....	Dismissed
James Evans .....	.....	Sarasota.....	Circuit.....	Dismissed
A. N. Farmer	Habeas Corpus	Volusia.....	Circuit.....	Affirmed
Mosley Finch et al.	Kidnapping	Putnam.....	Circuit.....	Reversed
Ralph E. Floyd	Desertion	Duval.....	Criminal.....	Reversed
Angus Gillis .....	.....	Walton.....	Circuit.....	Dismissed
C. A. Grabe	Assault to Murder	Volusia.....	Circuit.....	Dismissed
Foy Green	Habeas Corpus	Union.....	Circuit.....	Pet'r. R'm'd.
L. R. Hagan	Obtaining Money under False Pretense	Dade.....	Criminal.....	Reversed
R. H. Hardy	Stealing	Santa Rosa.....	Circuit.....	Reversed

3-A. G.	Vernon Hawthorne	Habeas Corpus	Dade.....	Circuit.....	Pet'r. Dischgd.
	B. J. Headlee .....	.....	Dade	Criminal.....	Dismissed
	William Henderson .....	.....	Dade.....	Criminal.....	Dismissed
	Steve Hill .....	.....	Sarasota.....	Circuit.....	Dismissed
	Arthur Holmes	Breaking and Entering	Duval.....	Criminal.....	Dismissed
	C. C. Hudson	Forgery	Duval.....	Criminal.....	Dismissed
	C. C. Hudson	Forgery	Duval.....	Criminal.....	Dismissed
	Levi Jacobs	Murder, 1st Degree	Brevard.....	Circuit.....	Affirmed
	Martin Jarvis	Habeas Corpus	Union.....	Circuit.....	Pet'r. R'm'd.
	Robert Johnson .....	.....	Santa Rosa.....	Circuit.....	Dismissed
	Tom Kendall	Maintaining Gambling House	Dade.....	Criminal.....	Reversed
	Horace Kendall	Maintaining Gambling House	Dade.....	Criminal.....	Reversed
	H. Langley	Manslaughter	Hillsborough.....	Criminal.....	Dismissed
	Luther Lane	Habeas Corpus	Pasco.....	Circuit.....	Pet'r. R'm'd.
	Frank LaRue	Manslaughter	Bradford.....	Circuit.....	Dismissed
	Jules Leavitte	Maintaining Gambling House	Dade.....	Criminal.....	Affirmed
	Nick Legarthesis .....	.....	Hillsborough.....	Criminal.....	Dismissed
	Louis Levene	Writ of Error Coram Nobis	Hillsborough.....	Circuit.....	Pet'r. Denied
	Jack Levins	Grand Larceny	Sarasota.....	Circuit.....	Dismissed
	Archibald Livingston	Habeas Corpus	LaFayette.....	Circuit	Pet'r. R'm'd.
	Jack Lynn	Grand Larceny	Sarasota.....	Circuit.....	Dismissed
	Jack Levins	Grand Larceny	Sarasota.....	Circuit.....	Dismissed
	Jim O. McCall	Murder, 2nd Degree	Okaloosa.....	Circuit.....	Reversed
	James E. McGill	Forgery	Dade.....	Criminal.....	Dismissed
	James McKenna	Grand Larceny	Brevard.....	Circuit.....	Affirmed
	Dan J. Mahoney	Habeas Corpus	Dade.....	Circuit.....	Pet'r. Dischgd.
	J. T. Manion .....	.....	Clay.....	Circuit.....	Dismissed
	J. E. Mapoles	Rape	Escambia.....	Circuit.....	Reversed
	Leo Marks	Keeping Gambling House	Dade.....	Criminal.....	Reversed
	J. J. Mendenhall	Habeas Corpus	Duval.....	Circuit.....	Reversed
	A. M. Mosley	Usury	Duval.....	Criminal.....	Dismissed

CASES DISPOSED OF DURING JUNE TERM 1934—(Continued)

66

BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
J. T. Morrow	Habeas Corpus	Dade	Circuit	Dismissed
Walter Myers et al.	Concealing Stolen Property	Dade	Criminal	Reversed
M. M. Newmann	Violation Sec. 7405-6 CGL.	Dade	Criminal	Reversed
Ossie Padgett	Larceny	Taylor	Circuit	Affirmed
N. W. Padgett	Removing and Concealing Stolen Property	Taylor	Circuit	Reversed
Wesley Hunter	Larceny	Taylor	Circuit	Affirmed
Brusel Parrish	Murder, 2nd Degree	Jackson	Circuit	Affirmed
J. J. Patrick	Manslaughter	Charlotte	Circuit	Affirmed
J. J. Patrick	Manslaughter	Charlotte	Circuit	Reversed
J. B. Pauling	Habeas Corpus	Okeechobee	County	Dismissed
J. R. Pinkerton		Dade	Criminal	Dismissed
John Preston	Robbery	Dade	Circuit	Affirmed
Harper L. Proctor	Breaking and Entering	Duval	Criminal	Dismissed
Harold G. Redstone	Embezzlement	Indian River	Circuit	Affirmed
Blanch Roberson	Manslaughter	Bradford	Circuit	Dismissed
A. L. Rogers	Habeas Corpus	Pinellas	Justice P.	Pet'r. Dischgd.
Oscar Simmons	Manslaughter	Santa Rosa	Circuit	Affirmed
C. A. Skipper	Embezzlement	D. of C.	U. S. Sup.	Dismissed
Fred Smith	Manslaughter	Duval	Criminal	Dismissed
Hernon Smith	Murder, 1st Degree	Orange	Circuit	Affirmed
J. H. Spero	Murder, 2nd Degree	Marion	Circuit	Affirmed
Will Strachan	Lottery	Dade	Criminal	Reversed
H. G. Sutterfield	Embezzlement	Hillsborough	Criminal	Dismissed
Sumner Sweeting		Dade	Criminal	Dismissed
J. L. Taylor	Embezzlement	Hendry	Circuit	Reversed

CASES DISPOSED OF DURING JUNE TERM 1934—(Continued)

Name of Offender	Offense	County	Court	Disposition
J. L. Taylor	Embezzlement	Hendry.....	Circuit.....	Reversed
F. J. Thurman	Gaming and Gambling	Duval.....	Circuit.....	Reversed
Hoyle Turknnett	Attempt to Break and Enter	Duval.....	Criminal.....	Reversed
Raleigh Ward	Petition to Reduce Bond	Union.....	Circuit.....	Pet'r. Denied
Fred Watson	Habeas Corpus	Alachua.....	Circuit.....	Dismissed
Richard White	Manslaughter	Duval.....	Circuit.....	Dismissed
N. J. Younis	Concealing Stolen Property	Dade.....	Circuit.....	Reversed

XIII.

REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS

STATE ATTORNEYS

REPORT OF STATE ATTORNEY

Covering Escambia County, First Judicial Circuit for Two years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	15	4	1
Second Degree	4	....	....
Rape	1	1	1
Assaults:			
With Intent to Commit Felony ..	6	....	....
Perjury	3	....	....
Crime Against Nature	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	3	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Enumerated		
Handled by State Attorney	2	....

Respectfully submitted,
E. DIXIE BEGGS, JR.
State Attorney.

REPORT OF STATE ATTORNEY

Covering Okaloosa County, First Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	4	1	1
Second Degree	2	....	....
Rape .....	....	1	....
Assaults:			
With Intent to Commit Felony	15	8	2

Arson and Kindred Offenses	1	....
Burglary and Kindred Offenses	6	4 3
Larceny:		
Of Automobiles	4	.... 3
Of Cattle	5	1 4
Kindred Offenses	3	1 1
Embezzlement	2	....
Forgery, Counterfeiting and Kindred Offenses	4	.... 1
Desertion and Withholding Support from Wife and Children	2	6
Miscellaneous Crimes Not Otherwise Enumerated:		
Affray	2	.... 1
Stealing Timber State Lands	2	1
Woods Burning	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	6	....

Respectfully submitted,
E. DIXIE BEGGS, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Santa Rosa County, First Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	7	1	1
Robbery:			
Armed	1	....	1
Assaults:			
With Intent to Commit Felony	8	8	1
Arson and Kindred Offenses	1	2	1
Larceny:			
Of Automobiles	1	2	....
Of Cattle	4	2	....
Kindred Offenses	3	....	1
Embezzlement	1	1	....
False Pretenses and Kindred Offenses .....	....	2	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Perjury	2	....	....
Adultery, Fornication, etc.	6	4	....
Incest	1	....	....

Bigamy	1	....	....
Violation Liquor Law, Second Offense	2	2	....
Desertion and Withholding Support from Wife and Children	7	....	1
Miscellaneous Crimes Not Otherwise Enumerated	18	22	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Jury. Not G.
Criminal Hearings Attended	5	....

Respectfully submitted,
E. DIXIE BEGGS, JR.
State Attorney

REPORT OF STATE ATTORNEY

Covering Walton County, First Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	6	2	....
Manslaughter	1	....	....
Robbery:			
Armed .....	....	1	....
Assaults:			
With Intent to Commit Felony	8	11	1
Other Assaults	9	8	....
Libel and Defamation	1	....	....
Burglary and Kindred Offenses	8	1	....
Larceny:			
Of Automobiles	4	2	....
Of Cattle	2	1	....
Kindred Offenses	5	5	....
Embezzlement	2	1	....
False Pretenses and Kindred Offenses	3	1	....
Forgery, Counterfeiting and Kindred Offenses	2	2	....
Adultery, Fornication, etc.	1	4	....
Violation Liquor Law, Second Offense	1	2	....
Desertion and Withholding Support from Wife and Children	2	3	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Selling Mortgaged Property	1	4	....
Woods Burning	4	....	....
Affray	3	1	1
Injury to Public Property	1	....	....

Game Laws	1	1	....
Poisoning Water	1	....	....
Culpable Negligence	1	....	....
Miscellaneous	8	17	?

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	All Affirmed
Bond Estreature Proceedings	2	Pending
Criminal Hearings Attended	4	....

Respectfully submitted,

E. DIXIE BEGGS, JR.

State Attorney.

REPORT OF STATE ATTORNEY

Covering Leon County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	9	1	2
Second Degree	1	....	....
Manslaughter	2	....	1
Rape	2	....	....
Robbery:			
Armed	3	1	....
Unarmed	4	....	....
Assaults:			
With Intent to Commit Felony	35	8	5
Arson and Kindred Offenses	2	3	1
Burglary and Kindred Offenses	48	8	4
Larceny:			
Of Automobiles	16	3	....
Of Cattle	7	3	....
Kindred Offenses	8	3	1
Embezzlement	3	2	1
False Pretenses and Kindred Offenses	3	3	....
Forgery, Counterfeiting and Kindred Offenses	7	1	....
Trespasses, Injuring Buildings, etc.	2	....	....
Perjury	2	....	....
Conspiracy	1	....	....
Adultery, Fornication, etc.	1	1	....
Bigamy .....	....	1	....
Desertion and Withholding Support from Wife and Children	3	3	1

Miscellaneous Crimes Not Otherwise

Enumerated:

Moving Property Subject to Lien..	4	....	....
Selling Morphine	9	....	....
Shooting into Dwelling	1	....	....
Receiving Stolen Property	2	2	....
Practicing Medicine without License	1	....	....
Obstructing Officer	1	1	....
Disposing Prop Subject to Lien...	1	2	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	20	16
Bond Estreature Proceedings	3	....
Criminal Hearings Attended	20	....
Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled By State Attorney	7	....

Respectfully submitted,
O. C. PARKER, JR.
State Attorney.

REPORT OF STATE ATTORNEY

Covering Jefferson County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	6	1	....
Rape	1	1	....
Robbery:			
Unarmed .....	....	1	....
Assaults	11	5	....
Arson and Kindred Offenses	1	1	....
Burglary and Kindred Offenses	15	3	2
Larceny:			
Of Automobiles	1	1	....
Of Cattle	5	....	....
Kindred Offenses	8	4	2
Embezzlement	3	1	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	1	....	....
Resisting Arrest, etc.	2	2	....
Crime Against Nature	1	....	....
Violation Liquor Law, Second Offense	1	....	....

Desertion and Withholding Support from Wife and Children	3	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Keeping Gaming House	1	....	1
Shooting into Dwelling House	1	....	1
Aiding Prisoner to Escape	2	....	....
Kidnapping	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	9	5
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	2	....
Other Cases Not Enumerated Handled by State Attorney	6	....

Respectfully submitted,
O. C. PARKER, JR.
State Attorney.

REPORT OF STATE ATTORNEY

Covering Liberty County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	5	....	....
Manslaughter .....	....	1	....
Rape	1	1	....
Assaults:			
With Intent to Commit Felony	11	3	1
Arson and Kindred Offenses .....	....	1	....
Burglary and Kindred Offenses	5	1	1
Larceny:			
Of Automobiles	1	....	....
Offenses Against Public—Revenue	1	....	....
Resisting Arrest, etc.	3	....	....
Desertion and Withholding Support from Wife and Children	4	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Operating car under influence of , Intoxicating Liquor	2	....	....
Obstructing an officer in perform- ance of his duty .....	....	2	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	4
Criminal Hearings Attended	6	....
Other Cases Not Enumerated Handled by State Attorney	5	....
Respectfully submitted,		
O. C. PARKER, JR.,		
State Attorney.		

REPORT OF STATE ATTORNEY

Covering Gadsden County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	6	1	1
Manslaughter	3	2	1
Rape	3	2	2
Robbery:			
Armed	1	1	1
Unarmed	1	....	1
Assaults:			
With intent to Commit Felony	6	3	1
Arson and Kindred Offenses	3	1	1
Burglary and Kindred Offenses	24	6	3
Larceny:			
Of Automobile	4	2	....
Kindred Offensees	6	1	....
Embezzlement	3	1	1
False Pretenses and Kindred Offenses	2	1	1
Forgery, Counterfeiting and Kindred Offenses	3	1	....
Offenses Against Public—Revenue .....	....	1	....
Resisting Arrest, etc.	1	....	....
Adultery, Fornication, etc. ....	....	1	....
Desertion and Withholding Support from Wife and Children	3	2	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	7	....
Criminal Hearings Attended	25	....
Habeas Corpus Hearings Attended	5	....
Other Cases Not Enumerated Handled by State Attorney	6	....
Respectfully submitted,		
O. C. PARKER, JR.,		
State Attorney.		

REPORT OF STATE ATTORNEY

Covering Franklin County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	3	1	....
Manslaughter .....	....	1	....
Rape	2	....	....
Robbery:			
Armed	2	1	....
Assaults:			
With intent to Commit Felony	17	3	1
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	4	2	1
Larceny:			
Of Automobiles	1	....	....
Kindred Offenses .....	....	1	....
Embezzlement:			
Public Officers	1	....	....
Trespasses, Injuring Buildings, etc.	2	....	....
Perjury	1	....	....
Resisting Arrest, etc.	1	....	....
Desertion and Withholding Support from Wife and Children	3	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Keeping House Ill-fame	2	....	....
Aiding Prisoner to escape	3	....	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Bond Validation Proceedings	1	....
Criminal Hearings Attended	9	....
Other Cases Not Enumerated Handled by State Attorney	5	....

Respectfully submitted,
O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Wakulla County, Second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	....	....
Manslaughter	2	....	....
Rape	1	....	....
Robbery:			
Unarmed .....	....	1	....
False Imprisonment and Kidnapping ..	1	....	....
Assaults:			
With intent to Commit Felony	6	2	1
Burglary and Kindred Offenses	5	2	1
Larceny	3	....	....
Embezzlement:			
Public Officers	1	....	1
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	2	1	....
Resisting Arrest, etc. ....	....	1	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Operating Automobile under influ- ence of liquor, doing property damage	2	....	....
Aiding prisoner to escape	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	3	....
Other Cases Not Enumerated Handled by State Attorney	5	....

Respectfully submitted,
O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Columbia County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Eighty-three Cases on Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	14	250	2
Second Degree	4	....	1
Manslaughter	5	....	1
Rape	10	....	1
Robbery:			
Armed	7	....	....
Assaults:			
With intent to Commit Felony	47	....	9
Arson and Kindred Offenses	3	....	3
Burglary and Kindred Offenses	20	....	4
Larceny:			
Of Automobiles	12	....	1
Embezzlement:			
Public Officers	3	....	2
False Pretenses and Kindred Offenses	2	....	2
Forgery, Counterfeiting and Kindred			
Offenses	10	....	....
Trespasses, Injuring Buildings, etc.	15	....	....
Perjury	1	....	....
Incest	3	....	....
Bigamy	1	....	....
Desertion and Withholding Support			
from Wife and Children	24	....	2
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Shooting Into a House	2	....	2
Maliciously Killing an Animal	2	....	....
Running House of Ill Fame	1	....	1
Receiving Stolen Property	4	....	1
Slot Machines	13	....	9
Changing Marks	4	....	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	12	....
Bond Validation Proceedings	2	....
Bond Estreasure Proceedings	23	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	3	....

Other Cases Not Enumerated Handled by State
Attorney 1

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Dixie County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Sixteen Cases on the Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	3	76	1
Manslaughter	2	....	2
Rape	10	....	5
Robbery:			
Armed	11	....	....
Assaults:			
With Intent to Commit Felony	7	....	....
Burglary and Kindred Offenses	5	....	1
Larceny:			
Of Automobiles	2	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Adultery, Fornication, etc.	2	....	....
Desertion and Withholding Support from Wife and Children	6	....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Wholesale Fish Dealer Without License	1	....	1
Fishing With Stop Nets	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Criminal Hearings Attended	2	....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hamilton County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Twenty-one Cases on Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	7	206	2
Rape	5	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With Intent to Commit Felony	20	....	8
Libel and Defamation	1	....	....
Burglary and Kindred Offenses	19	....	1
Larceny:			
Of Automobiles	8	....	2
Embezzlement:			
Public Officers	5	....	4
False Pretenses and Kindred Offenses	6	....	1
Bigamy	4	....	....
Desertion and Withholding Support			
From Wife and Children	11	....	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Shooting Into Car	3	....	1
Cutting Down Fence	2	....	1
Running House of Ill Fame	2	....	....
Maliciously Killing Animal	2	....	1
Selling Securities	6	....	1
Mingling Poisons	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	7	....
Bond Estreature Proceedings	12	....
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering LaFayette County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Fourteen Cases on the Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	2	84	....
Manslaughter	1	....	1
Rape	2	....	2
Assaults:			
With Intent to Commit Felony	6	....	....
Larceny:			
Of Automobiles	4	....	....
Embezzlement:			
Public Officers	6	....	5
Desertion and Withholding Support from Wife and Children	18	....	3
Miscellaneous Crimes Not Otherwise Enumerated:			
Maliciously Killing an Animal	2	....	....
Disposing of Personal Property	2	....	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	6	....
Habeas Corpus Hearings Attended	2	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Madison County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Twenty-four Cases on Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	15	165	2
Manslaughter	10	....	2
Rape	10	....	3

Robbery:		
Armed	3	1
Assaults:		
With Intent to Commit Felony	23	4
Arson and Kindred Offenses	1	1
Burglary and Kindred Offenses	31	6
Larceny:		
Of Automobiles	3	1
False Pretenses and Kindred Offenses	2	....
Forgery, Counterfeiting and Kindred		
Offenses	2	....
Trespasses, Injuring Buildings, etc.	2	1
Resisting Arrest, etc.	1	....
Conspiracy	2	....
Incest	3	....
Bigamy	2	....
Desertion and Withholding Support		
from Wife and Children	9	1
Miscellaneous Crimes Not Otherwise		
Enumerated:		
Shooting Into a House	1	1
Disposing of Personal Property	11	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	....
Bond Validation Proceedings	1	....
Bond Estreasure Proceedings	10	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Suwannee County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Fifteen Cases on Docket Beginning 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	5	175	2
Manslaughter	1	....	1
Rape	2	....	....
Robbery:			
Armed	1	....	....

Assaults:

With Intent to Commit Felony	6	....	....
Burglary and Kindred Offenses	13	....	4
Larceny:			
Of Automobiles	9	....	1
Embezzlement:			
Public Officers	8	....	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred			
Offenses	5	....	1
Resisting Arrest, etc.	1	....	....
Bigamy	1	....	....
Desertion and Withholding Support			
from Wife and Children	17	....	1
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Disposing of Personal Property	3	....	1
Maliciously Killing an Animal	2	....	....
Aiding in Concealment of Stolen			
Property	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	15	....
Bond Estreature Proceedings	10	....
Criminal Hearings Attended	8	....
Habeas Corpus Hearings Attended	4	....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Taylor County, Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws.
Forty Cases on Docket Beginning of 1933

	Indictments Returned by Grand Jury.	Cases In- vestigated by Grand Jury.	Verdicts of Not Guilty and Nolle Pros.
Homicide:			
First Degree	11	139	3
Manslaughter	2	....	1
Rape	2	....	1
Assaults:			
With Intent to Commit Felony	23	....	3
Arson and Kindred Offenses	8	....	3
Burglary and Kindred Offenses	17	....	2
Larceny:			
Of Automobiles	9	....	1

Perjury	2	.....	1
Conspiracy	1	.....	.....
Desertion and Withholding Support from Wife and Children	27	.....	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Lewd Cohabitation	6	.....	0
Shooting Into House and Auto	2	.....	.....
Fishing With Stop Nets	2	.....	.....
Gathering Sponges Unlawfully	4	.....	.....
Unlawfully Disposing of Personal Property	19	.....	6

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	9	.....
Bond Validation Proceedings .....	.....	.....
Bond Estreature Proceedings	11	.....
Criminal Hearings Attended	6	.....
Habeas Corpus Hearings Attended	4	.....

Respectfully submitted,

J. R. KELLY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Clay County, Fourth Judicial Circuit for Period From June 21st,
1933 to December 31st, 1934, inclusive, Under Section 132,
Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Assaults:			
With intent to Commit Felony	4	.....	1
Burglary and Kindred Offences	6	.....	.....
Larceny:			
Of Cattle	2	1	.....
Forgery, Counterfeiting and Kindred Offenses .....	.....	1	.....
Desertion and Withholding Support from Wife and Children	1	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Violation of Section 7590, Compiled Gen. Laws of 1927 .....	.....	1	.....
Burning Woods	1	.....	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	1	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,
JOHN W. HARRELL
 State Attorney

REPORT OF STATE ATTORNEY

Covering Duval County, Fourth Judicial Circuit for Two Years,
 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	45	7	9
Second Degree	13	....	....
Manslaughter	10	....	....
Rape	7	....	1
Forgery, Counterfeiting and Kindred Offenses	21	....	....
Misconduct by Officers	2	....	....
Conspiracy	2	....	....
Hearing held by or examination of witnesses before State Attorney pur- suant to Section 4741, C. G. L. of 1927	2	....	....

NOTE: The incumbent of the office of State Attorney, Fourth Judicial Circuit, assumed the duties thereof on June 21st, 1933. The records of all of the matters handled by the preceeding State Attorney are not available to the incumbent—for period of time extending from January 1st, 1933, to June 21st, 1933, inclusive.

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	6	....
Criminal Hearings Attended	144*	41
Habeas Corpus Hearings Attended	10	....
Other Cases Not Enumerated Handled by State Attorney	25	....

*Of these 144 matters 41 were exonerated and 103 were held for further investigation by Grand Jury or other official action.

Respectfully submitted,
JOHN W. HARRELL
 State Attorney

REPORT OF STATE ATTORNEY

Covering Nassau County, Fourth Judicial Circuit for period from June 21, 1933, to December 31, 1934, inclusive, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	3	1	1
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	3	3	....
Other Assaults	2	....	....
Arson and Kindred Offenses	2	....	....
Burglary and Kindred Offenses	8	1	1
Larceny:			
Of Cattle	1	....	....
Embezzlement	1	....	....
False Pretenses and Kindred Offenses	1	3	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Unlawfully taking Shrimp	2	4	....
Operating for Hire Motor Vehicle Without Permit	1	1	....
Burning Woods	1	....	1
Obscene Language .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....
Bond Validation Proceedings	2	....

Respectfully submitted,

JOHN W. HARRELL

State Attorney

REPORT OF STATE ATTORNEY

Covering Marion County, Fifth Judicial Circuit for Two Years, October 1932-December 1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	11	4	1
Second Degree	1	....	....
Manslaughter .....	....	2	....

Rape	1	.....	.....
Robbery:			
Armed	2	1	.....
Unarmed	2	1	.....
Assaults:			
With intent to Commit Felony	13	5	1
Other Assaults	4	2	1
Arson and Kindred Offenses	1	1	1
Burglary and Kindred Offenses	51	5	1
Larceny:			
Of Automobiles	7	4	1
Of Cattle	5	3	.....
Kindred Offenses	5	2	.....
Embezzlement	7	1	.....
False Pretenses and Kindred Offenses	2	2	1
Forgery, Counterfeiting and Kindred			
Offenses	10	.....	1
Perjury	1	.....	.....
Bigamy	1	.....	.....
Violation Beer Law	1	.....	.....
Desertion and Withholding Support			
from Wife and Children	4	.....	.....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Driving Drunk and Property Dam-			
age	1	.....	.....
Cutting Timber Lands Sold for			
Taxes	1	.....	.....
Threat Injury to Extort Money ..	1	.....	.....
Malicious Injuring Beast of An-			
other	1	1	.....
Receiving and Aiding Conceal			
Stolen Property	7	.....	2
Wilful Killing Animal of Another	.....	1	.....
Malicious Shooting into House	1	1	.....
Placing Obstruction on R. R.			
Track	1	.....	.....
Unlawful Obtaining of Narcotics..	2	.....	.....
Aiding Prisoner to Escape	1	.....	.....
Disposing of Property under Lien	1	1	.....
Conspiring to Have Another Ar-			
rested	1	.....	.....
Hit and Run Driver	3	.....	.....
Carnal Knowledge Female under			
18	1	.....	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	15	*
Bond Validation Proceedings	1	Validated

Criminal Hearings Attended	94	....
Habeas Corpus Hearings Attended	20	**
*2 affirmed, 4 dismissed, 1 not guilty, balance pending.		
**11 remanded, 8 released, 1 pending.		

Respectfully submitted,
A. R. BUIE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Pasco County, Sixth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	1	....
Manslaughter	2	2	2
Rape (Attempted)	1	2	....
Robbery:			
Armed	6	1	2
Assaults:			
With Intent to Commit Felony	7	3	2
Other Assaults	7	....	....
Burglary and Kindred Offenses	12	5	3
Larceny:			
Of Automobiles	1	....	....
Of Cattle	3	1	1
Kindred Offenses	6	3	1
Embezzlement:			
Public Officers	3	1	....
Other Kinds	2	1	....
False Pretenses and Kindred Offenses	3	....	....
Adultery, Fornication, etc.	1	....	....
Incest	1	....	....
Crime Against Nature	1	....	....
Violation Liquor Law, Second Offense	....	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Abortion	1	....	1
Concealing Stolen Property	4	1	....
Cutting Timber on State Land	1	....	....
Carnal Intercourse Female Under 18	2	1	1
Possessing Lottery Tickets	2	....	....
Unlawful Assembly	1	....	....
Gambling	5	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	1	....
Criminal Hearings Attended	8	....

Respectfully submitted

CHESTER B. McMULLEN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Pinellas County, Sixth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	8	2	2
Manslaughter	5	5	2
Rape .....	....	5	....
Attempted Rape .....	....	3	....
Robbery:			
Armed	3	....	....
Attempted	1	....	....
Unarmed, Attempted	4	1	1
Assaults:			
With Intent to Commit Felony	18	7	2
Other Assaults	1	1	1
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	65	4	6
Larceny:			
Of Automobiles	15	....	2
Of Goat	1	....	....
Kindred Offenses:			
Grand Larceny	18	4	2
Petit Larceny	3	....	....
Embezzlement:			
Public Officers	2	....	....
Other Kinds	11	5	2
False Pretenses and Kindred Offenses .....	....	4	....
Forgery, Counterfeiting and Kindred Offenses	6	1	....
Trespasses, Injuring Buildings, etc.	1	....	....
Perjury .....	....	2	....
Resisting Arrest, etc.	3	2	1
Adultery, Fornication, etc.	1	....	1
Bigamy	2	....	....
Crime Against Nature	3	....	....
Violation Liquor Law, Second Offense	3	....	....

Desertion and Withholding Support from Wife and Children	11	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Possession of Burglarious Tools ..	1	....	....
Harboring Fugitives .....	....	1	....
Receiving Stolen Property, etc.	4	3	1
Violation Fla. Securities Comm. Laws	5	....	....
Lottery Laws .....	....	1	....
Entering Fruit Grove to Commit Felony	1	....	....
Carnal Intercourse under 18	2	4	1
Bastardy	2	....	1
Kidnaping	1	3	....
Disposing of Property under Lien ..	1	....	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	Writ of Error Dismissed
Bond Validation Proceedings	26	....
Bond Estreature Proceedings	17	....
Habeas Corpus Hearings Attended	20	....
Other Cases Not Enumerated Handled by State Attorney—Disbarment	1	....
Confiscated Liquor Cars	12	....

Respectfully submitted,
CHESTER B. McMULLEN,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Volusia County, Seventh Judicial Circuit for Two Years,
 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	6	4	2
Manslaughter	1	2	....
Rape .....	....	5	....
Armed	5	3	....
Unarmed	2	....	....
False Imprisonment and Kidnaping ..	1	....	1
Assaults:			
With Intent to Commit Felony	8	10	....
Other Assaults	6	10	....

Arson and Kindred Offenses	1	1	....
Grand Larceny	7	9	....
Embezzlement	8	2	....
False Pretenses and Kindred Offenses	1	1	....
Forgery, Counterfeiting and Kindred Offenses	1	3	....
Adultery, Fornication, etc.	1	....	....
Unlawful Intercourse .....	....	1	....
Bigamy	1	....	....
Violation Narcotic Law, 2nd Offense..	4	....	....
Desertion and Withholding Support from Wife and Children	8	15	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Casting Illegal Ballot	7	....	....
Breaking and Entering to Commit a Felony	10	8	....
Breaking and Entering to Commit a Misdemeanor	14	....	....
Reckless Driving	1	....	....
Buying and Selling Stolen Property	1	2	....
Injury from Culpable Negligence..	1	....	....
Possession of Burglarious Tools ..	1	....	....
Obstructing Justice .....	....	5	....
Enticing Female to Leave Home..	....	2	....
Escape .....	....	2	....
Attempt to Rob .....	....	2	....
Imputing Want of Chastity .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	60	*
Bond Validation Proceedings	4	....
Bond Estreuture Proceedings	4	**
Criminal Hearings Attended	21	....
Habeas Corpus Hearings Attended	20	....
Other Cases Not Enumerated Handled by State Attorney	5	***
Investigations	13	....
Injunctions	4	....

*Referred and Remanded, 1; Dismissed, 13; Stricken, 25; Continued, 21.

**Dismissed, 1; Judgments, 3.

***Dismissed, Stricken, Continued.

Respectfully submitted,
MURRAY SAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Alachua County, Eighth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	22	2	1
Manslaughter .....	.....	4	.....
Mayhem	4	.....	.....
Rape	7	3	.....
Robbery:			
Armed	8	.....	2
Unarmed	2	.....	1
Assaults:			
With intent to Commit Felony	29	8	2
Other Assaults	4	1	.....
Arson and Kindred Offenses .....	.....	4	.....
Burglary and Kindred Offenses	59	9	3
Larceny:			
Of Automobiles	12	11	.....
Kindred Offenses	10	.....	2
Embezzlement	4	5	2
Forgery, Counterfeiting and Kindred Offenses	8	1	.....
Crime Against Nature	6	1	.....
Desertion and Withholding Support			
From Wife and Children	4	1	.....
Miscellaneous Crimes Not Otherwise			
Enumerated	26	11	3
Chancery Suits—Injunction	14	.....	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	42	40
Bond Validation Proceedings	2	2
Criminal Hearings Attended	52	.....
Habeas Corpus Hearings Attended	9	.....
Other Cases Not Enumerated Handled by State Attorney	2	.....

Respectfully submitted,

J. C. ADKINS

State Attorney

REPORT OF STATE ATTORNEY

Covering Gilchrist County, Eighth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First degree	3	1	....
Assaults:			
With intent to Commit Felony	5	2	....
Burglary and Kindred Offenses	3	1	....
Larceny:			
Of Cattle	2	....	....
Embezzlement:			
Public Officers	4	....	....
Forgery, Counterfeiting and Kindred Offenses .....	....	2	....
Miscellaneous Crimes Not Otherwise Enumerated:			
To Recover on Official Bonds	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	5	....

Respectfully submitted,

J. C. ADKINS

State Attorney

REPORT OF STATE ATTORNEY

Covering Levy County, Eighth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	8	3	....
Robbery:			
Armed	4	2	....
Unarmed .....	....	2	....
Assaults:			
With intent to Commit Felony	9	3	2
Burglary and Kindred Offenses	26	4	2
Larceny:			
Of Automobiles	2	1	....
Of Cattle	4	....	1
Kindred Offenses	2	....	....

Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children	3	1	....
Miscellaneous Crimes Not Otherwise Enumerated	16	4	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	10	10
Bond Validation Proceedings	1	closed
Criminal Hearings Attended	22	....

Respectfully submitted,

J. C. ADKINS

State Attorney

REPORT OF STATE ATTORNEY

Covering Holmes County, Ninth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	2	....
Manslaughter .....	....	2	....
Rape .....	....	1	....
Robbery:			
Armed	1	....	....
False Imprisonment and Kidnaping	1	....	....
Assaults:			
With intent to Commit Felony	8	7	....
Other Assaults	3	1	....
Arson and Kindred Offenses .....	....	2	....
Burglary and Kindred Offenses	8	3	....
Larceny:			
Of Cattle	1	1	....
Kindred Offenses	5	2	1
Embezzlement	1	....	....
False Pretenses and Kindred Offenses	1	1	1
Trespasses, Injuring Buildings, etc.	7	4	2
Resisting Arrest, etc. ....	....	1	....
Conspiracy	3	4	....
Adultery, Fornication, etc.	1	....	....
Violation Liquor Law, Second Offense	1	2	2
Desertion and Withholding Support from Wife and Children	10	3	2

Miscellaneous Crimes Not Otherwise
Enumerated:

Operating Auto While Intoxicated	2	2	1
Disposing of Prop. Under Lien	1	3	1
Unlawful Exhibition of Weapon ....	....	1	....
Slander .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	15	15

Respectfully submitted,

L. D. McRAE

State Attorney

REPORT OF STATE ATTORNEY

Covering Washington County, Ninth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	5	1	2
Assaults:			
With intent to Commit Felony	6	10	1
Other Assaults	3	1	3
Arson and Kindred Offenses	3	....	1
Burglary and Kindred Offenses	8	1	4
Larceny:			
Of Cattle	3	3	1
Kindred Offenses	2	1	2
Embezzlement	1	3	....
Forgery, Counterfeiting and Kindred Offenses	4	....	1
Trespasses, Injuring Buildings, etc.	2	....	1
Perjury	1	1	....
Resisting Arrest, etc.	3	....	....
Adultery, Fornication, etc.	5	1	....
Incest	2	....	1
Bigamy	1	1	....
Miscegeneration .....	....	1	....
Violation Liquor Law, Second Offense	1	....	1
Desertion and Withholding Support from Wife and Children	6	2	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Concealing Mortgaged Property	2	....	1

Defamation of Character	2	....
Practicing Medicine, Unlawfully	2	1
Destroying Personal Property	1	....
Cutting Timber on Tax Lands	5	1
Operating Auto While Intoxicated	2	1
Maiming Animal	4	....
Attempting to Bribe	1	....
Concealing Stolen Property	1	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	1
Criminal Hearings Attended	14	14

Respectfully submitted,

L. D. McRAE
State Attorney

REPORT OF STATE ATTORNEY

Covering Polk County, Tenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	17	4	4
Second Degree	6	....	....
Manslaughter	1	1	....
Rape	2	....	1
Assaults	2	....	....
Embezzlement:			
Public Officers	1	1	....
Embezzlement Charge Against Public Officers (assisting County Solicitor)	4	....	....
Investigation of Homicides, Suicides and other Law Violations	44	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	50	47
Bond Validation Proceedings	15	15
Bond Estreature Proceedings	32	32
Criminal Hearings Attended	24	24
Habeas Corpus Hearings Attended	23	23
Other Cases Not Enumerated Handled by State Attorney	13	11

Respectfully submitted,

J. C. ROGERS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Dade County, Eleventh Judicial Circuit, for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.		
Homicide:				
First Degree	39	4		
Manslaughter	1	....	
Rape	5	....	
Assault with Intent to Commit Rape	1	....	
Assault with Intent to Commit Murder	1	....	
Kidnaping	4	....	
First Degree Murder				
Cases Prosecuted	Mis-trial	Convictions	Acquittal	Nol Pros
28	1	24	3	5
Kidnaping for Ransom				
Cases Prosecuted				
4		4		
Rape Cases Prosecuted				
4		2	2	
Murder Cases Where Defendant Adjudged Insane				2
Murder Cases Awaiting Action of Grand Jury				5
Cases Investigated and Referred to County Solicitor				61
Investigation of:				
Accidental Deaths				150
Natural Causes				52
Suicide				85
Attempt Suicide				27
Assault with Deadly Weapon				169
Habeas Corpus Hearings Attended				97
Bond Validation Proceedings				4
Bond Estreature Proceedings				198
Inquests and Preliminary Hearings Attended				225
Appeals				49
Contempt Hearings				1
Disbarment Proceedings				6
Restoration of Sanity Hearings				4
Attendance Upon Grand Jury				36 days
Witnesses Appearing Before Grand Jury				198
Witnesses Appearing Before State Attorney				93

Miscellaneous Proceedings Prosecuted:

City of Miami vs. Ernest Amos, Comptroller (defending)

State vs. Fred Pine, Prosecuting before State Senate over a
Period of Approximately Five Weeks.

Bastardy Cases Prosecuted 1

Numerous Investigations of Miscellaneous and Unrecorded Com-
plaints.

Respectfully submitted,

Vernon Hawthorne.

State Attorney.

REPORT OF STATE ATTORNEY

Covering Charlotte County, Twelfth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	3	.....	.....
Second Degree	2	1	.....
Robbery:			
Armed	3	.....	.....
Assaults:			
With Intent to Commit Felony	2	.....	.....
Other Assaults	2	.....	.....
Libel and Defamation .....	.....	2	.....
Burglary and Kindred Offenses	9	.....	3
Larceny:			
Of Cattle	2	.....	2
Embezzlement:			
Public Officers	2	.....	.....
Forgery, Counterfeiting and Kindred Offenses	1	.....	.....
Incest	1	.....	.....
Desertion and Withholding Support from Wife and Children .....	.....	1	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Cutting Quarantine Fence .....	.....	2	.....
Timber Stealing	2	.....	.....
Reckless Driving	2	2	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	.....
Criminal Hearings Attended	14	.....
Habeas Corpus Hearings Attended	1	.....

Other Cases Not Enumerated Handled by State

Attorney	1
----------------	---	-------

Respectfully submitted,
 GUY M. STRAYHORN,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Collier County, Twelfth Judicial Circuit for Two Years,
 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree .....	.....	2	.....
Second Degree	1	1	.....
Manslaughter	2	.....	.....
Rape .....	.....	2	.....
Assaults:			
With Intent to Commit Felony	1	1	.....
Other Assaults .....	.....	1	.....
Arson and Kindred Offenses .....	.....	2	.....
Larceny:			
Of Automobiles	1	.....	.....
Of Cattle	3	.....	.....
Kindred Offenses .....	.....	2	.....
Perjury	1	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Violation of Motor Vehicle Law	1	.....	.....
Culpable Negligence	1	.....	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	2	.....

Respectfully submitted,
 GUY M. STRAYHORN,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Glades County, Twelfth Judicial Circuit for Two Years,
 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
Second Degree	1	1	.....
Manslaughter .....	.....	1	.....

Assaults:			
With Intent to Commit Felony	1	....	....
Other Assaults	2	1	....
Burglary and Kindred Offenses	2	....	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	1	....	1
Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred			
Offenses	1	....	....
Adultery, Fornication, etc.	1	....	1
Bigamy	1	....	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Cutting Quarantine Fence	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	4	Bound Over
Other Cases Not Enumerated Handled by State		
Attorney	2	....

Respectfully submitted,
 GUY M. STRAYHORN,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Hendry County, Twelfth Judicial Circuit for Two Years,
 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
Second Degree	4	2	1
Manslaughter .....	....	1	....
Robbery:			
Armed	4	....	....
Assaults:			
With Intent to Commit Felony	1	2	....
Burglary and Kindred Offenses	13	....	....
Larceny:			
Of Automobiles	4	....	....
Of Cattle	3	....	....
Kindred Offenses	1	2	....
Embezzlement:			
Public Officers	9	....	1
Other Kinds	2	....	....
Perjury .....	....	1	....
Adultery, Fornication, etc.	2	2	....

Desertion and Withholding Support from Wife and Children	1
---	---	------

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	2	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,
GUY M. STRAYHORN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Lee County, Twelfth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	1	....	....
Second Degree	5	3	2
Manslaughter .....	....	1	....
Robbery:			
Armed	3	....	....
Unarmed	1	....	....
Assaults:			
With Intent to Commit Felony	9	2	1
Other Assaults	5	1	....
Burglary and Kindred Offenses	17	6	1
Larceny:			
Of Automobiles	5	1	....
Kindred Offenses	4	....	....
Embezzlement	5	....	....
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Perjury	1	....	....
Bribery	1	....	....
Crime Against Nature	1	....	....
Desertion and Withholding Support from Wife and Children	1	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Attempt to Dissuade Witness	1	....	....
Violation of Lottery Law	17	....	2
Using Personal Property Without Owner's Permission	4	....	....

Timber Stealing 1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	.....
Bond Estreature Proceedings	2	.....
Criminal Hearings Attended	20	.....
Habeas Corpus Hearings Attended	3	.....
Other Cases Not Enumerated Handled by State Attorney	5	.....

Respectfully submitted,
GUY M. STRAYHORN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hillsborough County, Thirteenth Judicial Circuit, since my
Appointment July 11, 1933, to January 5, 1935,
Under Section 132 Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	22	10	4
Rape	1	2	.....
Robbery:			
Armed	2	.....	.....

Miscellaneous Matters Not Otherwise Enumerated:

Five investigations, bastardy proceedings.

Handled numerous collection items for Florida State Hospital.

Two disbarment proceedings.

Reported on at least six special investigations at instance of Governor.

Personally investigated about 40 homicides not reported above; recorded testimony finding clear case of suicide or justifiable homicide, or death from natural causes.

Attended a lengthy grand jury investigation of office of Sheriff and office of County Solicitor in February and March, 1934.

Attended lengthy grand jury investigation of election frauds, July and August, 1934.

Attended lengthy grand jury investigation of Hillsborough County FERA, July and August, 1934.

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Affirmed
Bond Validation Proceedings	1	*

Criminal Hearings Attended	18	**
Habeas Corpus Hearings Attended	17	....
Other Cases Not Enumerated Handled by State Attorney	20	***

*Bonds validated by Circuit Court; appealed Superior Court and reversed.

**Preliminary hearings (14 murder, 4 rape); several discharged.

***Restoration to Sanity proceedings.

Respectfully submitted,
J. REX FARRIOR,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Jackson County, Fourteenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	8	1	1
Second Degree	5	1	....
Manslaughter	4	1	1
Rape	1	....	....
Robbery:			
Armed	1	....	....
Assaults:			
With Intent to Commit Felony	23	6	6
Other Assaults .....	....	4	....
Arson and Kindred Offenses	1	....	1
Burglary and Kindred Offenses	36	14	3
Larceny:			
Of Automobiles	3	....	....
Of Cattle	8	4	1
Kindred Offenses	5	5	1
Embezzlement .....	....	2	....
False Pretenses and Kindred Offenses	1	2	....
Forgery, Counterfeiting and Kindred Offenses	4	3	....
Trespasses, Injuring Buildings, etc.	7	2	3
Offenses Against Public Revenue	1	2	1
Perjury .....	....	1	....
Adultery, Fornication, etc.	2	6	....
Bigamy	2	....	....
Violation Liquor Law, Second Offense .....	....	1	....
Desertion and Withholding Support from Wife and Children	23	7	4

Miscellaneous Crimes Not Otherwise
Enumerated:

Disposing of Mortgaged Property	2	6	....
Maliciously Injuring Animals	....	5	....
Hit and Run Driving	1	....	....
Aiding Escape	1	....	....
House of Ill Fame	1	....	....
Reckless Driving	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	6	*
Bond Estreature Proceedings	2	**
Criminal Hearings Attended	11	....
Habeas Corpus Hearings Attended	1	Defendant Held

*2 Affirmed, 2 Reversed, 2 Not Disposed of.

**Judgment Recovered.

Respectfully submitted

JOHN H. CARTER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Calhoun County, Fourteenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	2	....
Second Degree	1	....	....
Manslaughter	....	1	....
Robbery:			
Armed	1	....	....
Assaults:			
With Intent to Commit Felony	6	....	3
Other Assaults	4	6	2
Arson and Kindred Offenses	....	3	....
Burglary and Kindred Offenses	3	....	....
Larceny	....	1	....
False Pretenses and Kindred Offenses	....	1	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	4	4	1
Adultery, Fornication, etc.	3	2	1
Desertion and Withholding Support from Wife and Children	6	....	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Disposing of Property under Lien	1	....
Shooting into Building	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	3 aff.; 1 rev.
Criminal Hearings Attended	5	....

Respectfully submitted,

JOHN H. CARTER, JR.

State Attorney.

REPORT OF STATE ATTORNEY

Covering Gulf County, Fourteenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Assaults:			
With Intent to Commit Felony	2	1	1
Other Assaults	2	....	....
Burglary and Kindred Offenses	2	....	....
Larceny	2	....	....
Embezzlement .....	....	1	....
Trespasses, Injuring Buildings, etc. ....	....	1	....
Adultery, Fornication, etc. ....	....	2	....
Desertion and Withholding Support from Wife and Children	1	....	....

Respectfully submitted,

JOHN H. CARTER, JR.

State Attorney.

REPORT OF STATE ATTORNEY

Covering Palm Beach County, Fifteenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	12	6	3
Manslaughter	5	*	*
Rape	3	....	3
Assaults:			
With Intent to Commit Felony	2	*	*
Perjury	5	*	*

Misconduct by Officers	1	*	*
Adultery, Fornication, etc.	1	*	*
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving a Bribe	1	*	*
Bastardy Proceeding	1	.....	Dismissed
Election Fraud	1	*	*
Gambling and Operating Gamb ling House	10	*	*
Disbarment Proceedings	3	.....	1
Liquor Confiscations	3	.....	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Affirmed
Bond Validation Proceedings	4	Validated
Criminal Hearings Attended	21	.....
Habeas Corpus Hearings Attended	8	Disposed of
Other Cases Not Enumerated Handled by State Attorney	4	.....

*Remanded to Criminal Court of Record.

Respectfully submitted,
J. W. SALISBURY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Lake and Sumter Counties, Sixteenth Judicial Circuit for Two
Years, 1933 and 1934, Under Section 132,
Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	12	4	2
Manslaughter	3	2	.....
Robbery:			
Armed	3	.....	.....
Unarmed	6	5	.....
Assaults:			
With Intent to Commit Felony....	19	31	.....
Other Assaults	5	3	.....
Burglary and Kindred Offenses	39	21	2
Larceny:			
Of Automobiles	19	2	.....
Of Cattle	4	5	.....
Kindred Offenses—Grand Larceny	21	11	.....

Embezzlement	9	7	....
False Pretenses and Kindred Offenses	2	2	....
Forgery, Counterfeiting and Kindred Offenses	7	5	....
Conspiracy Destruction of Cattle .....	....	1	....
Adultery, Fornication, etc.	11	....	....
Breaking Down Fence .....	....	1	....
Bigamy .....	....	2	....
Wanton Destruction of Property .....	....	3	....
Crime Against Nature	1	....	....
Violation Liquor Law, Second Offense	3	....	....
Desertion and Withholding Support from Wife and Children	9	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Having Possession of Lottery Tickets	6	....	....
Killing Cattle by Poison	2	1	....
Conveying Tools into Jail to Aid Escape	8	....	1
Attempt to Rob	1	....	....
Attempt to Rape	1	....	1
Practicing Medicine Without License	1	....	....
Violating Fish Law	3	....	....
Driving While Intoxicated	9	....	1
Placing Obstruction on Railroad..	1	....	....
Removing Property Under Lien..	2	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	Affirmed
Criminal Hearings Attended	31	28 held
Habeas Corpus Hearings Attended	11	9 held

Respectfully submitted,
J. W. HUNTER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Orange County, Seventeenth Judicial Circuit for Two Years,
Spring Term 1933-Fall Term 1934 Inc., Under Section 132,
Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	5	....	....
Manslaughter	1	....	....

Rape	1	1	....
Assaults:			
With Intent to Commit Felony	1	....	....
Sending Threatening Communications	1	....	....
Embezzlement:			
Public Officers—Bank Cashier	3	....	....
Perjury	2	....	....
Miscellaneous Crimes Not Otherwise			
Enumerated	1	....	....
A number of the above were transferred to the Criminal Court of			
Record for trial.			

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	2	*
*One validated, one not validated.		

Respectfully submitted,

H. F. MOHR,

State Attorney.

REPORT OF STATE ATTORNEY

Covering Osceola County, Seventeenth Judicial Circuit for Two Years,
Spring Term 1933-Fall Term 1934 Inc., Under Section 132,
Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	3	....	....
Manslaughter .....	....	1	....
Mayhem	1	....	....
Rape	1	....	....
Robbery:			
Armed	5	....	....
Assaults:			
With Intent to Commit Felony	7	....	1
Other Assaults .....	....	....	1
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	8	....	1
Larceny:			
Of Automobiles	1	....	....
Grand Larceny	8	....	2
Embezzlement	7	....	....
False Pretenses and Kindred Offenses	3	....	....
Forgery, Counterfeiting and Kindred			
Offenses	5	1	1
Perjury	1	....	....
Bigamy	1	....	....

Desertion and Withholding Support from Wife and Children	3	....	3
Miscellaneous Crimes Not Otherwise Enumerated	1	....	....
A number of the above were transferred to County Court for trial.			

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Not Finished

Respectfully submitted,
H. F. MOHR,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Manatee County, Eighteenth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	13	2	3
Second Degree	1	3	....
Manslaughter	2	2	....
Rape	2	....	1
Robbery—Unarmed	2	....	....
Assaults:			
With Intent to Commit Felony	7	3	1
Other Assaults	1	1	....
Sending Threatening Communications ..	1	....	....
Arson and Kindred Offenses	4	1	3
Burglary and Kindred Offenses	41	11	9
Larceny:			
Of Automobiles	8	....	1
Of Cattle	1	1	1
Kindred Offenses	3	8	....
Embezzlement:			
Public Officers	2	....	....
Other Kinds	5	3	....
False Pretenses and Kindred Offenses ..	6	1	....
Forgery, Counterfeiting and Kindred Offenses	13	7	2
Perjury .....	....	1	....
Misconduct by Officers .....	....	1	....
Resisting Arrest, etc.	3	1	....
Adultery, Fornication, etc. ....	....	6	....
Incest .....	....	1	....
Bigamy	2	1	....
Violation Liquor Law, Second Offense ..	1	....	....

Desertion and Withholding Support from Wife and Children	7	6	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Accessory Murder	3	3	....
Cutting Fence	2	....	1
Recovering Stolen Property	4	....	2
Lottery	2	....	....
Extortion .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	Affirmed
Bond Validation Proceedings	2	Pending
Bond Estreasure Proceedings	4	*
Criminal Hearings Attended	25	....
Habeas Corpus Hearings Attended	10	....
Other Cases Not Enumerated Handled by State Attorney	4	**

*Judgments Entered.

**Briefs Supreme Court.

Respectfully submitted,
DEWEY A. DYE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hardee, DeSoto and Highlands Counties, Nineteenth Judicial
Circuit for Two Years, 1933-1934, Under Section 132,
Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	14	1	5
Manslaughter	2	....	....
Rape .....	....	2	....
Robbery:			
Armed	1	....	....
Unarmed .....	....	1	....
Assaults:			
With Intent to Commit Felony	10	2	....
Other Assaults	26	10	5
Arson and Kindred Offenses	2	1	1
Burglary and Kindred Offenses	31	1	4
Larceny:			
Of Automobiles	6	....	....
Of Cattle	9	3	1
Kindred Offenses	8	1	1

Embezzlement:

Public Officers	2	....	....
Public Institutions	13	....	....
Other Kinds	1	2	....
False Pretenses and Kindred Offenses	9	3	....
Forgery, Counterfeiting and Kindred Offenses	5	....	....
Trespasses, Injuring Buildings, etc.	2	2	1
Resisting Arrest, etc.	3	2	....
Adultery, Fornication, etc.	2	1	....
Bigamy .....	....	1	....
Desertion and Withholding Support from Wife and Children	7	11	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Property	4	1	....
Operating Gambling Apparatus	1	....	....
Killing Animal of Another	1	1	....
"Hit-and-Run Driver"	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	16	....
Bond Estreature Proceedings	3	....
Criminal Hearings Attended	9	....
Habeas Corpus Hearings Attended	4	....

Other Cases Not Enumerated Handled by State Attorney:

Assignments outside of circuit based on Executive order are as follows:

1. Term of Court in Hernando County.
2. Investigation of the office of and prosecution of Tax Collector of Polk County.
3. Conducting hearing before Senate Committee based on Suspension Order of Tax Collector of Polk County.
4. Assisting in prosecution of murder case in Charlotte County.

Respectfully submitted,
L. GRADY BURTON,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Monroe County, Twentieth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Murder Cases	3	....	....
Habeas Corpus Cases	2	....	....

Respectfully submitted,

ROSS C. SAWYER, Clerk Circuit Court
For JOHN G. SAWYER, State Attorney.

REPORT OF STATE ATTORNEY

Covering Indian River County, Twenty-first Judicial Circuit for Two
Years, 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	1	....
Manslaughter	2	1	....
Robbery:			
Armed	5	3	....
Unarmed	2	....	....
False Imprisonment and Kidnaping	3	....	....
Assaults:			
With Intent to Commit Felony	3	2	1
Other Assaults	1	....	....
Burglary and Kindred Offenses	7	7	1
Larceny	1	1	....
Embezzlement:			
Public Officers	4	....	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	1	....
Criminal Hearings Attended	15	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Martin County, Twenty-first Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Rape	1	....	....

Robbery:			
Armed	3	...	3
Unarmed	1	...	...
Assaults:			
With Intent to Commit Felony	4	...	1
Burglary and Kindred Offenses	3	1	1
Larceny:			
Of Automobiles	1	1	...
Kindred Offenses	2	...	...
Forgery, Counterfeiting and Kindred Offenses	6	...	...
Incest .....	...	1	...
Crime Against Nature .....	...	1	...

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	...
Criminal Hearings Attended	7	...

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Okeechobee County, Twenty-first Judicial Circuit for Two Years, 1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	1	...	...
Manslaughter	1	...	...
Robbery:			
Armed	1	...	1
Assaults:			
With Intent to Commit Felony ....	...	4	...
Burglary and Kindred Offenses	7	1	...
Larceny	2	3	...
Embezzlement	2	...	1
Forgery, Counterfeiting and Kindred Offenses	2	3	...
Adultery, Fornication, etc.	1	3	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Resisting Arrest .....	...	1	...

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	1	...

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering St. Lucie County, Twenty-first Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	....	1
Manslaughter	2	....	1
Robbery:			
Armed	3	....	....
Assaults:			
With Intent to Commit Felony	8	2	....
Other Assaults	4	....	....
Arson and Kindred Offenses	1	1	....
Burglary and Kindred Offenses	5	2	1
Larceny	14	3	5
Embezzlement:			
Public Officers	2	1	1
Other Kinds	2	....	....
Forgery, Counterfeiting and Kindred Offenses .....	....	3	....
Adultery, Fornication, etc.	1	....	....
Bigamy	2	....	....
Desertion and Withholding Support from Wife and Children	1	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Doing Business Without License	5	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....
Criminal Hearings Attended	17	....
Habeas Corpus Hearings Attended	3	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,

ANGUS SUMNER,

State Attorney.

REPORT OF STATE ATTORNEY

Covering Broward County, Twenty-second Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	9	3	1
Manslaughter	1	1	1

Rape	2	1	1
Robbery:			
Armed	3	...	1
Unarmed .....	...	3	...
Assaults:			
With Intent to Commit Felony	7	3	1
Sending Threatening Communications	1	...	...
Burglary and Kindred Offenses	25	...	2
Larceny:			
Of Automobiles	2	1	...
Of Cattle	1	...	...
Kindred Offenses	3	3	1
Embezzlement	1	2	...
Forgery, Counterfeiting and Kindred			
Offenses	1	1	...
Resisting Arrest, etc.	1	1	1
Bigamy	1	...	1
Crime Against Nature	1	1	1
Desertion and Withholding Support			
from Wife and Children	3	1	...
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Receiving Stolen Property	1	...	...
Nolle Prossed (Not Shown Above) ..	8	...	...
Pending (Not Shown Above)	12	...	...
Enticing Female .....	...	1	...
Misdemeanors (Not Shown Above) ..	4	...	...

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	...
Bond Estreature Proceedings	12	...
Habeas Corpus Hearings Attended	8	...
Liquor Confiscation Cases	28	...

Respectfully submitted,

LOUIS F. MAIRE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Seminole County, Twenty-Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	5	3	...
Manslaughter	2	1	...
Rape	2	2	1

Robbery:			
Armed	1	.....	.....
Unarmed .....	.....	1	.....
False Imprisonment and Kidnaping .....	.....	1	.....
Assaults:			
With intent to Commit Felony	8	3	.....
Burglary and Kindred Offenses	19	2	.....
Larceny:			
Of Automobiles	4	2	1
Embezzlement	1	3	.....
Forgery, Counterfeiting and Kindred			
Offenses	4	.....	.....
Adultery, Fornication, etc.	1	.....	.....
Bigamy	1	.....	.....
Desertion and Withholding Support			
from Wife and Children	4	4	.....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Malicious Mischief	2	.....	.....
Receiving Stolen Goods	1	2	.....
Selling Lottery Tickets .....	.....	2	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	.....
Criminal Hearings Attended	15	.....
Habeas Corpus Hearings Attended	6	.....

Respectfully submitted,

LLOYD F. BOYLE

State Attorney

REPORT OF STATE ATTORNEY

Covering Brevard County, Twenty-Third Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	6	3	1
Rape .....	.....	1	.....
Robbery:			
Unarmed	5	.....	.....
Assaults:			
With intent to Commit Felony	2	.....	.....
Other Assaults .....	.....	7	.....
Sending Threatening Communications	1	.....	.....
Arson and Kindred Offenses	2	.....	.....
Burglary and Kindred Offenses	17	2	.....
Larceny	9	.....	.....

Embezzlement:

Public Officers	9	....	....
Other Kinds	3	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children	2	3	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Obstructing an Officer and Resisting Arrest	4	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	1	....
Criminal Hearings Attended	20	....
Habeas Corpus Hearings Attended	4	....

Respectfully submitted,

LLOYD F. BOYLE

State Attorney

REPORT OF STATE ATTORNEY

Covering Citrus County, Twenty-fourth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	1	....	....
Manslaughter	1	2	....
Assaults:			
With Intent to Commit Felony	5	3	....
Other Assaults	3	2	....
Arson and Kindred Offenses	1	....	....
Larceny:			
Of Automobiles	2	....	....
Kindred Offenses	1	1	....
Embezzlement	1	....	....
Forgery, Counterfeiting and Kindred Offenses	2	1	....
Adultery, Fornication, etc.	1	1	....
Incest	1	....	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children .....	....	3	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Entering Without Breaking	7	....	....
Breaking and Entering	9	....	....
Hit and Run Driver	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	2	....
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

M. C. SCOFIELD,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hernando County, Twenty-fourth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	2	1	1
Rape .....	....	1	....
Assaults:			
With Intent to Commit Felony	6	5	1
Other Assaults .....	....	2	....
Sending Threatening Communications	1	1	....
Arson and Kindred Offenses	1	2	....
Larceny:			
Of Automobiles	1	2	....
Kindred Offenses	4	....	....
Embezzlement	3	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Trespasses, Injuring Buildings, etc.	2	2	....
Resisting Arrest, etc. ....	....	1	....
Violation Liquor Law, Second Offense	1	....	....
Desertion and Withholding Support from Wife and Children .....	....	4	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	3	3	....
Hit and Run Driver	2	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

M. C. SCOFIELD,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Flagler County, Twenty-fifth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	1	1	....
Manslaughter	3	....	1
Assaults:			
With Intent to Commit Felony	3	2	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	1	....	....
False Pretenses and Kindred Offenses	1	....	....
Incest	1	....	....
Desertion and Withholding Support from Wife and Children	3	....	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings	1	....

* Other Cases Not Enumerated Handled by State
Attorney.

* Suit on Tax Collector's Bond.

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Putnam County, Twenty-fifth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	4	2	1
Manslaughter	1	1	....
Rape	1	....	....
Robbery:			
Unarmed	6	....	....
False Imprisonment and Kidnaping	2	....	....
Assaults:			
With Intent to Commit Felony	9	1	....
Other Assaults	9	....	1
Arson and Kindred Offenses	4	1	2

Larceny:			
Of Cattle	2	.....	.....
Kindred Offenses	1	.....	.....
Embezzlement	3	.....	.....
Forgery, Counterfeiting and Kindred Offenses	5	2	.....
Adultery, Fornication, etc.	2	.....	.....
Violation Liquor Law, Second Offense	1	.....	.....
Desertion and Withholding Support from Wife and Children	3	1	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	24	1	.....
Hit and Run	1	.....	.....
Accessories	1	.....	.....
Cutting Fence	1	.....	.....
Resisting Arrest	1	1	.....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	.....
Bond Estreature Proceedings	2	.....
Habeas Corpus Hearings Attended	12	.....
* Other Cases Not Enumerated Handled by State Attorney.		

* Number unlimited.

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering St. Johns County, Twenty-fifth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	7	3	1
Second Degree	1	.....	.....
Rape	2	1	1
Robbery:			
Armed	2	.....	.....
Assaults:			
With Intent to Commit Felony	7	3	.....
Larceny:			
Of Automobiles	2	.....	.....
False Pretenses and Kindred Offenses	2	1	1

Desertion and Withholding Support from Wife and Children	2	2	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Disposing Property Under Lien	1	....	....
Breaking and Entering	10	2	1
Illegal Fishing	2	....	....
Statutory Charge .....	....	1	....
Miscellaneous .....	....	1	....
Violation Auto Laws	1	6	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	2	....
Criminal Hearings Attended	20	....

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Baker County, Twenty-Sixth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	8	1	1
Manslaughter	1	....	....
Robbery:			
Unarmed	2	1	1
Assaults:			
With intent to Commit Felony	8	2	1
Other Assaults	3	2	1
Larceny:			
Of Cattle	5	1	1
Kindred Offenses	3	1	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	4	1	1
Bastardy	1	....	1
Cutting Fence	1	....	....
Hit and Run Driver	1	....	....
Carnal Intercourse	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	7	....

Respectfully submitted,

A. S. CREWS

State Attorney

REPORT OF STATE ATTORNEY

Covering Bradford County, Twenty-Sixth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	4	....	1
Mayhem	1	....	....
Robbery:			
Unarmed	2	1	....
Assaults:			
With intent to Commit Felony	8	2	1
Other Assaults	2	3	....
Arson and Kindred Offenses	1	....	....
Embezzlement	4	1	....
Violation Liquor Law, Second Offense	1	....	....
Desertion and Withholding Support from Wife and Children	1	2	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	12	2	2
Burning Woods	1	....	1
Aiding Prisoner to Escape	1	....	....
Shooting into House	1	....	....
Entering Without Breaking	2	1	....
Throwing Missile Into Auto	1	....	....
Driving Truck Intoxicated	1	....	....
Worthless Check	1	....	....
Trespass to State Lands	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....

Respectfully submitted,

A. S. CREWS

State Attorney

REPORT OF STATE ATTORNEY

Covering Union County, Twenty-Sixth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	5	1	2
Second Degree	2	....	....
Manslaughter	2	....	....
Assaults:			
With intent to Commit Felony	9	2	2
Other Assaults	3	1	....
Larceny:			
Of Cattle	3	....	....
Kindred Offenses	2	1	....
Crime Against Nature	2	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	8	3	1
Trespass and Cutting Timber	2	....	....
Burning Woods	1	....	1
Culpable Negligence	1	....	....
Aiding Prisoner to Escape	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Criminal Hearings Attended	10	10
Habeas Corpus Hearings Attended	10	10

Respectfully submitted,

A. S. CREWS
State Attorney

REPORT OF STATE ATTORNEY

Covering Sarasota County, Twenty-Seventh Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	4	....	2
Rape .....	....	1	....

Robbery:			
Armed	2	2	....
Assaults:			
With intent to Commit Felony	8	2	....
Other Assaults	2	2	....
Sending Threatening Communications		1	....
Burglary and Kindred Offenses	15	4	5
Larceny:			
Of Automobiles	3		....
Of Cattle	2	1	....
Kindred Offenses	13	2	5
Embezzlement	1	2	....
False Pretenses and Kindred			
Offenses	2	1	....
Forgery, Counterfeiting and Kindred			
Offenses	2		....
Trespasses, Injuring Buildings, etc.	2		2
Perjury		1	....
Adultery, Fornication, etc	1	1	....
Bigamy		1	....
Desertion and Withholding Support			
from Wife and Children	4	4	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Bond Validation Proceedings	2	....
Criminal Hearings Attended	22	....
Habeas Corpus Hearings Attended	4	....

Respectfully submitted,

HENRY L. WILLIFORD

State Attorney

REPORT OF STATE ATTORNEY

Covering Bay County, Twenty-Eighth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	3	4	....
Manslaughter		3	....
Rape	1		1
Robbery:			
Armed	3		2
Assaults:			
With intent to Commit Felony	12	6	4
Other Assaults	3	5	2

Arson and Kindred Offenses	5	3	5
Burglary and Kindred Offenses	14	8	2
Larceny:			
Of Automobiles	5	1	....
Of Cattle	1	....	....
Kindred Offenses	17	2	1
Embezzlement:			
Public Institutions	2	....	1
False Pretenses and Kindred			
Offenses	1	1	1
Forgery, Counterfeiting and Kindred			
Offenses	8	2	....
Trespasses, Injuring Buildings, etc.	10	....	....
Perjury	2	1	2
Resisting Arrest, etc.	3	2	....
Adultery, Fornication, etc.	3	2	1
Incest	1	....	....
Bigamy	1	....	....
Desertion and Withholding Support			
from Wife and Children	3	2	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Several other crimes not men-			
tioned above, without giving			
the names thereof	31	9	17

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....
Bond Validation Proceedings (Refunding)	2	....
Criminal Hearings Attended	30	....

Other Cases Not Enumerated Handled by State Attorney

In answer to this question I wish to explain that, since I have been State Attorney, it has been the unvarying practice with the County Judge and myself that he would not issue warrant on any felony committed in this Circuit until the party had come to my office and laid the matter before me and I had made an investigation. I always had the witnesses before me, and very often, in such investigations, I would leave my office and go to the particular vicinity of the crime complained about, and in numbers and numbers of such instances, after my investigation, I would refuse to have any warrant issued because I would find out that it was a family row, or spite work of some kind and that the parties just wanted the County and State to spend money and help them fight out their private grievances. Time and time again, parties have come to my office for warrants where it was evident that they wanted the State and County to take a tilt in their trouble just to help them collect a debt. I have always refused to let warrants issue in such cases.

In other words, since I have been State Attorney, I have investigated all felonies purported to be committed in this County and I have uniformly followed the program above set forth and in this way I have saved hundreds of dollars to the State and County which would otherwise been expended for naught. I have no record, but I believe that there are more than a hundred such cases in the last two years.

Respectfully submitted,

C. R. MATHIS

State Attorney

XIV.

COUNTY SOLICITORS

REPORT OF COUNTY SOLICITOR
CRIMINAL COURT OF RECORD

Covering Dade County, Criminal Court of Record, Judicial Circuit, from
May 29, 1933, to December 8, 1934, Under Section 132,
Compiled General Laws

	Information Filed Convictions	Dismissed	Verdicts of Not Guilty Returned
Homicide:			
Second Degree	---	4	---
Manslaughter	10	11	3
Mayhem	1	2	1
Rape	---	2	---
Robbery:			
Armed	14	18	13
Unarmed	3	2	3
Assaults:			
With Intent to Commit Felony ..	29	10	7
Other Assaults	10	2	2
Sending Threatening Communications	3	---	2
Arson and Kindred Offenses	---	---	2
Burglary and Kindred Offenses	96	56	24
Larceny:			
Of Automobiles	31	12	3
Kindred Offenses	29	22	9
Embezzlement	21	44	8
False Pretenses and Kindred Offenses	6	16	1
Forgery, Counterfeiting and Kindred Offense	3	4	1
Trespasses, Injuring Building, etc.	1	---	---
Perjury	---	1	---
Bribery	---	2	---
Adultery, Fornication, etc.	1	3	---
Bigamy	2	2	---
Crime Against Nature	9	4	5
Violation Liquor Law, Second Offense	3	4	1
Desertion and Withholding Support from Wife and Children	11	12	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Operating Gambling House	3	14	1
Maintaining a Lottery	6	4	---
Possession of Narcotics	9	2	1

Unlawful Carnal Intercourse	4	5	1
Fraud		1	....
Circulating Charges Against Candidate		2	....
Abortion .....		....	1

Also See Following Report:

REPORT OF COUNTY SOLICITOR

CRIMINAL COURT OF RECORD, COURT OF CRIMES DIVISION

Covering Dade County, Judicial Circuit for May 29, 1933 to December 8, 1934, Under Section 132, Compiled General Laws

	Information Filed Convictions	Dismissed	Verdicts of Not Guilty Returned
Assaults	71	38	11
Larceny:			
Petit	59	4	6
Vagrancy	34	5	1
Trespasses	2	10	1
Violation Liquor Law	50	21	3
Miscellaneous Crimes Not Otherwise Enumerated:			
Improper Auto License	33	4	1
Resisting Officer	6	1	....
Doing Business Without License	13	2	....
Reckless Driving, Driving Drunk	25	3	2
Carrying concealed weapons, etc.	17	1	3
Gambling	36	....	2
Using Auto of Another Without Owners Consent	7	....	....
Beating Way on Train and Beating Board Bill	11	....	....
Issuing Worthless Checks	10	2	3
Operating Overloaded Truck	4	....	....

Respectfully submitted

FRED PINE
County Solicitor

REPORT OF COUNTY SOLICITOR

Covering Duval County, Fourth Judicial Circuit for Two Years,
1933-1934, Under Section 132, Compiled General Laws

	Information Filed			
	Indictments Returned by Grand Jury. 1933-1934	No Bills Miscel- laneous.	Verdicts of Not Guilty Returned. 1933-1934	
Homicide:				
Second Degree	5	12	2	5
Third Degree, Assault to Murder	173	161	22	13

Manslaughter	9	15	1933	1	3
Mayhem	2	1	.....	.....	.....
Rape, (Assault to Rape)	7	11	(99)	3	4
Robbery:					
Unarmed	71	70	1934	11	10
False Imprisonment and Kidnaping	2	1	.....	.....	.....
Assaults: (Miscellaneous Cases)	428	376	(46)	17	19
Arson and Kindred Offenses	7	6	.....	2	.....
Larceny:					
Grand Larceny	65	51	.....	9	7
Of Automobiles, etc.	49	54	.....	11	6
Kindred Offenses	246	285	.....	17	14
Embezzlement	35	35	.....	9	7
False Pretenses and Kindred Offenses	9	12	.....	.....	.....
Forgery, Counterfeiting and Kindred Offenses	49	81	.....	8	5
Trespasses, Injuring Buildings, etc... ..	5	16	.....	2	1
Perjury	1	.....	.....	.....	.....
(Common Drunkards)	27	31	.....	3	2
Usury	4	1	.....	2	.....
Adultery, Fornication, etc.	9	13	.....	4	.....
Uttering Indecent Language	9	35	.....	.....	.....
(Tapping Electric Main)	9	5	.....	.....	.....
Violation Drug Laws	14	16	.....	1	3
Crime Against Nature	2	2	.....	.....	.....
Violation Liquor Law	121	13	.....	27	6
Desertion and Withholding Support from Wife and Children	14	19	.....	2	3
Miscellaneous Crimes Not Otherwise Enumerated:					
Receiving Stolen Goods	19	17	.....	11	9
Violation of Auto Laws	451	455	.....	27	31
Assault and Battery	81	86	.....	13	11
Violation Gambling Laws	34	50	.....	2	3
Allowing Cattle to Roam at Large	2	.....	.....	.....	.....
Beating Board Bill	14	8	.....	3	2
Disposing Property Under Conditional Bill of Sale, etc.	14	4	.....	3	1
Carrying Concealed Weapons	13	19	.....	3	4
Total	2000	1961	145	215	169

Total Number of Cases (New) handled during Year of 1933—2000.

Total Number of Cases (New) handled during Year of 1934—1961.

OTHER CASES HANDLED BY COUNTY SOLICITOR

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	....

Respectfully submitted,

L. D. HOWELL

County Solicitor

These are approximate figures compiled by the Clerk's Office for the County Solicitor of Duval County, Florida, by H. L. Elarbee, Deputy Clerk.

REPORT OF COUNTY SOLICITOR

Covering Escambia County, Court of Record, for Two Years, 1933-1934,
Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
Second Degree	12	....	1
Manslaughter	1	....	1
Rape	4	....	1
Robbery:			
Unarmed	20	....	6
False Imprisonment and Kidnaping	3	....	1
Assaults:			
With Intent to Commit Felony	25	....	3
Other Assaults	419	....	38
Burglary and Kindred Offenses	77	....	12
Larceny:			
Of Automobiles	20	....	2
Of Cattle	14	....	2
Kindred Offenses	267	....	28
Embezzlement	19	....	3
False Pretenses and Kindred Offenses	5	....	....
Forgery, Counterfeiting and Kindred			
Offenses	34	....	....
Trespasses, Injuring Buildings, etc.	22	....	2
Offenses Against Public Revenue	101	....	6
Perjury	2	....	....
Resisting Arrest, etc.	3	....	....
Conspiracy	4	....	....
Adultery, Fornication, etc.	30	....	1
Incest	2	....	....
Bigamy	1	....	....
Crime Against Nature	2	....	1
Desertion and Withholding Support			
from Wife and Children	35	....	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Public Drunkenness	605	....	6
Malicious Mischief, etc.	58	....	12
Vagrancy, etc.	40	....	1
Traffic Violations	177	....	11
Concealed Weapons	38	....	....
Profane Language	72	....	1
Escape	8	....	....
Kidnaping	2	....	....

Respectfully submitted,

R. H. MERRITT,

County Solicitor.

REPORT OF COUNTY SOLICITOR

For Hillsborough County, Thirteenth Judicial Circuit for Two Years,
1933-1934.

	Plead Guilty Convicted	Acquitted	Nolle Prossed	Dismissed by Court	Total Infs.
2nd Degree Murder	3	3	....	....	6
Manslaughter	4	1	1	....	6
Mayhem	1	....	....	....	1
Armed Robbery	7	3	1	2	13
Unarmed Robbery	6	2	....	....	8
Assault to Rape	1	2	....	1	4
Assault to Murder	30	7	4	....	41
Aggravated Assault	33	6	2	1	42
Assault and Battery	34	4	7	1	46
Bare Assault	3	....	....	....	3
Breaking and Entering	91	7	16	....	114
Entering	8	1	1	....	10
Larceny of Auto	45	2	1	1	49
Grand Larceny	15	5	2	1	23
Petit Larceny	176	13	12	1	202
Embezzlement	17	2	2	1	22
False Pretenses	2	....	1	....	3
Forgery	17	11	11	....	39
Trespass	11	2	1	....	14
Perjury	12	....	....	....	12
Adultery	1	....	....	....	1
Bigamy	1	1	1	....	3
Reckless Driving	43	6	4	....	53
Driving While Drunk	19	3	1	....	23
Being Drunk	66	2	....	....	68
Possession Stolen Property	5	3	1	1	10
Fraudulent Registration	1	....	....	....	1
Fornication	1	....	....	....	1
Liquor Law Violation	23	2	2	3	30

Gambling	4	3	1	8
Game Law Violation	6		1	7
Carnal Intercourse	1	1	1	3
Barber Law Violations	3			3
Unlawful Gas Pipe Connection	4	2		6
Operating Business Without License	8	1	2	11
Desertion and Non-support	6	5	6	17
Affray	1			1
Beating Way on Train	54			54
Indecent Exposure		1		1
Contributing to Minor's Delinquency	1	1		2
Cruelty to Minors	1			1
Cruelty to Animals	1			1
Motor Vehicle Law Violations	50	6	3	59
Vagrancy	3			3
Worthless Checks	22	1	6	29
Resisting Arrest	1			1
Disposing of Property Under Lien..	4		2	6
Injuring Personal Property	1			1
Exhibiting Dangerous Weapon	1			1
Fish Law Violations	1			1
Larceny of Animals	1			1
Escape	2			2
Keeping House of Ill-fame	1			1
Narcotic Violations	16			16
Killing Animal of Another		1		1
Using Car of Another Without Consent	9			9
	881	113	93	1099

Respectfully submitted,

JAY C. HARDEE,
County Solicitor.

REPORT OF COUNTY SOLICITOR
CRIMINAL COURT OF RECORD

Covering Monroe County Florida, for Two Years, 1933-1934,
Under Section 132, Compiled General Laws

	Informations Filed By Solicitor	Nollprossed by Solicitor	Verdicts of Not Guilty Returned
Homicide			
Manslaughter	1	1	
Unlawful Carnal Intercourse	4	1	1
Assaults:			
With intent to Commit Felony	7		
Other Assaults	37	9	7
Breaking and Entering	11	3	

Larceny:

Petit and Grand	13	2	1
Embezzlement	4	1	2
Trespass, Injuring Buildings, etc.	5	2	.....
Doing Business Without License	17	7	1
Resisting Arrest, etc.	2	1	.....
Violation Barber Law	4	4	.....
Desertion and Withholding Support from Wife and Children	10	4	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Vagrancy	23	3	1
Gambling	20	5	2
Carrying Concealed Weapons	1	.....	1
Drunkenness	7	1	1
Unnatural and Lascivious Act	1	.....	.....
Profane Language	11	1	1
Removing Property Under Retail Title	1	.....	.....
Violation Election Laws	2	2	.....
Unlawful Possession of Liquor	15	3	1
Driving Auto Under Influence of Liquor	3	.....	1
Unlawful Assembly	1	1	.....
Unlawful Possession of Lottery Tickets and Setting up Lottery	4	2	1

Respectfully submitted,
 AQUILINO LOPEZ, JR.
 County Solicitor

REPORT OF COUNTY SOLICITOR

Covering Orange County for Two Years, 1933-1934, Under Section 132,
 Compiled General Laws

	Informations Filed.	Verdicts of Not Guilty Returned.
Homicide:		
Second Degree	8	2
Manslaughter	4	2
Robbery:		
Armed	8	3
Unarmed	4	2
Assaults:		
With Intent to Commit Felony	75	13
Other Assaults	142	25
Arson	5	.....
Burglary and Kindred Offenses	87	10

Larceny:		
Of Automobiles	13	2
Grand and Petit Larceny	143	18
Embezzlement	31	8
False Pretenses and Kindred Offenses	15	4
Forgery	15	6
Trespasses	16	....
Resisting Arrest	16	1
Incest	7	....
Bigamy	2	....
Desertion and Withholding Support	12	....
Receiving Stolen Goods	8	....
Worthless Check	21	1
Carrying and Exhibition of Deadly Weapons	47	2
Violation of Liquor Law	58	5
Drunkenness	527	2
Driving While Drunk	49	5
Reckless Driving	127	5
Other Traffic Violations	192	....
Violation of the Gambling Laws	106	....
Other Miscellaneous Misdemeanors	161	8
Total	1899	124

Respectfully submitted,

O. RAYMOND ELLARS,

County Solicitor.

REPORT OF COUNTY SOLICITOR CRIMINAL COURT OF RECORD

Covering Palm Beach County for Two Years, 1933-1934,

Under Section 132, Compiled General Laws

	Informations Filed by County Solicitor	Verdicts Guilty Returned by Jury	Verdicts of Not Guilty Returned By Jury
Homicide:			
Second Degree	1	....	1
Manslaughter	7	4	1
Mayhem	1	1	....
Robbery:			
Armed	10	5	....
Unarmed	13	8	....
Assaults:			
With intent to Commit Felony	124	70	17
Other Assaults	94	55	4
Arson and Kindred Offenses	8	....	4
Burglary and Kindred Offenses	212	153	14

Larceny:

Of Automobiles	27	25	1
Kindred Offenses	140	98	10
Embezzlement	10	3	4
False Pretenses and Kindred Offenses	5	2	....
Forgery, Counterfeiting and Kindred Offenses	30	21	1
Perjury	5	....	....
Adultery, Fornication, etc.	10	4	....
Bigamy	1	1	....
Violation Liquor Law	62	50	1
Desertion and Withholding Support from Wife and Children	10	6	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Concealed Weapons	19	13	....
Narcotics	2	2	....
Receiving Stolen Property	20	12	1
Reckless Driving	15	9	....
Operating Car, No License	19	19	....
Gambling—Operating Gambling House	25	10	2
Miscellaneous: Vagrancy, Withholding Possession House and Misdemeanors not listed above	219	106	3

Respectfully submitted,

W. E. ROEBUCK
County Solicitor

REPORT OF COUNTY SOLICITOR

Covering Polk County, Tenth Judicial Circuit for Two Years, 1933-1934,
Under Section 132, Compiled General Laws

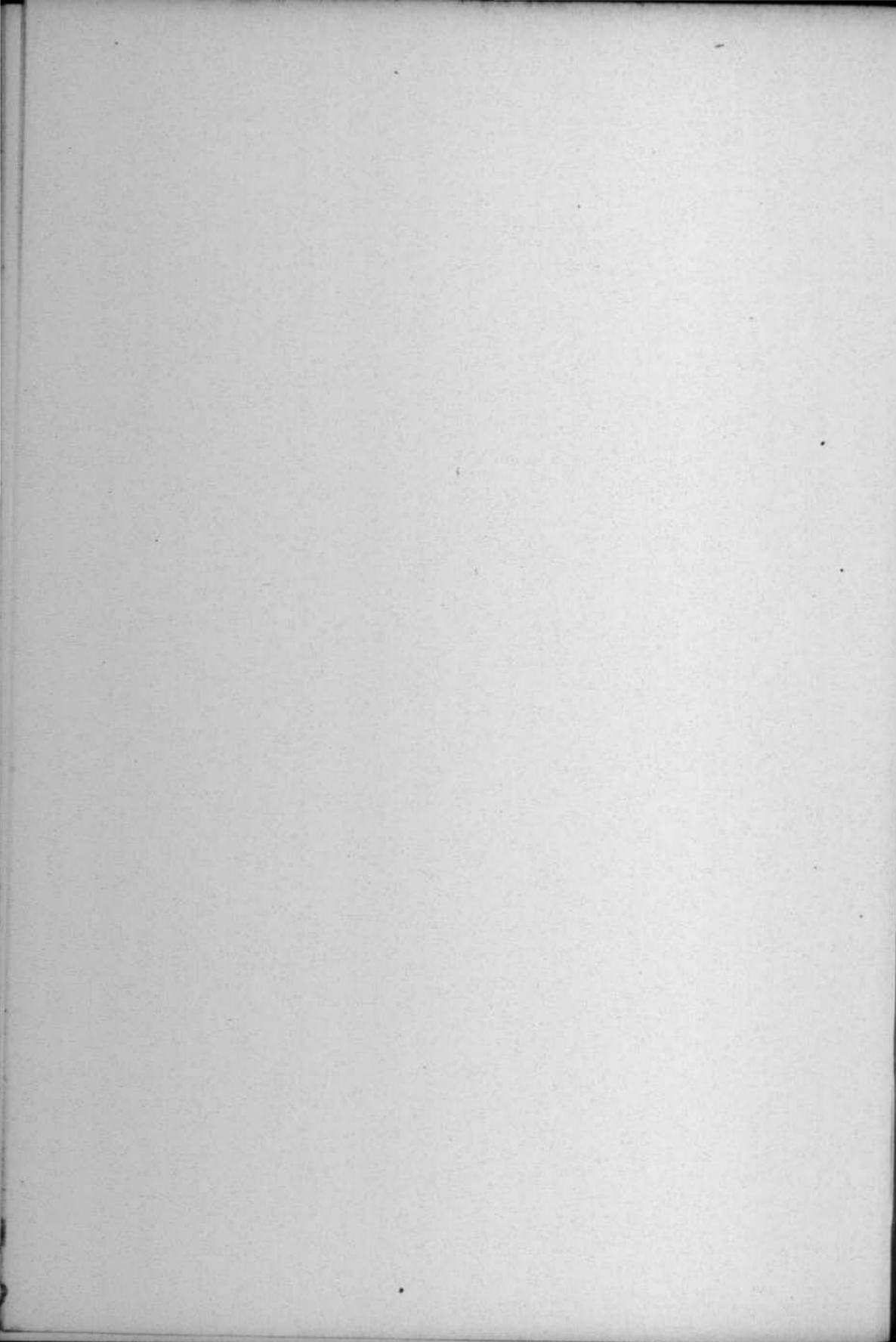
		No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
Homicide:			
Second Degree	1	....	1
Manslaughter	9	....	2
Mayhem	1	....	....
Rape	2	....	1
Robbery:			
Armed	18	....	3
Unarmed	1	....	....
Assaults:			
With Intent to Commit Felony	7	....	....
Other Assaults	137	....	15
Arson and Kindred Offenses	5	....	5
Burglary and Kindred Offenses	73	....	10

Larceny:		
Of Automobiles	11	2
Kindred Offenses	181	13
Embezzlement	5	4
False Pretenses and Kindred Offenses	3	1
Forgery, Counterfeiting and Kindred		
Offenses	13	3
Trespasses, Injuring Building, etc.	24	5
Offenses Against Public Revenue	65	
Resisting Arrest, etc.	2	
Adultery, Fornication, etc.	15	3
Violation Liquor Law	40	3
Desertion and Withholding Support		
from Wife and Children	3	1
Miscellaneous Crimes Not Otherwise		
Enumerated:		
Lotteries	3	
Gambling and Possession of De-		
vices	65	15
Violation of Game and Fresh		
Water Fish	16	
Being Drunk	362	6
Driving Drunk	18	2
Reckless Driving	32	7
Beating Board Bill	5	1
Carrying Concealed Weapons	25	
Vagrancy	29	
Using Profanity	3	1
Issuing Worthless Checks	16	

Respectfully submitted,

MANUEL M. GLOVER,

County Solicitor.



Index

PART 1

A

Appropriations	Page 36-37
Attorney-General, General Scope of Duties	24
Additional Help	35
Administrative Duties of Boards	27
Board, Canvassing	29
Board for Fixing Values of Investment and Securities of Trust Companies	31
Board for Supervision and Regulation of Forms to be used for Assumption or Risk by Surety Companies	31
Board, Housing	32
Board of Administration	29
Board of Assessment of R. R. and Telegraphs	31
Board of Commissioners of Okeechobee Flood Control District...	31
Board of Commissioners of State Institutions	27
Board of Conservation	32
Board of Education	27
Board of Pardons	28
Board of Vocational Education	28
Budget Commission, State	29
Commission to Examine into Validity State Warrants	30
Delinquent Tax Adjustment Board of Appeals	31
Examination of Abstracts of Title	34
Extradition Matters	34
Florida Securities Commission	29
Office Furnishings and Library	34
Opinions, Official	32
Opinions, Unofficial	33
Publishing Acts and Resolution of Legislature	34
Reporter for Supreme Court	33
School Book Commission	31
State Sinking Fund	30
State Statutes, Tested in Courts	33
Trustees, I. I. Fund and State Drainage Commissioners	28
Attorney General, Letter of Transmittal	23
Attorneys General, List of	7
Attorneys General, Assistants, List of	8

C.

	Page
Cases Handled, Civil and Criminal, Compiled Statement	38
Cases Handled, Civil, Tabulated Report	39
Cases Handled, Criminal, Tabulated Report	55
Circuit Court Calendar:	
First Circuit—Walton, Santa Rosa, Escambia and Okaloosa Counties	14
Second Circuit—Franklin, Liberty, Gadsden, Wakulla, Jefferson and Leon	14
Third Circuit—Hamilton, Dixie, Taylor, Madison, Columbia, Suwannee, and LaFayette Counties	15
Fourth Circuit—Clay, Nassau and Duval	15
Fifth Circuit—Marion	16
Sixth Circuit—Pinellas and Pasco	16
Seventh Circuit—Volusia	16
Eighth Circuit—Alachua, Gilchrist and Levy	16
Ninth Circuit—Holmes and Washington	17
Tenth Circuit—Polk	17
Eleventh Circuit—Dade	17
Twelfth Circuit—Charlotte, Collier, Glades, Hendry and Lee....	18
Thirteenth Circuit—Hillsborough	18
Fourteenth Circuit—Calhoun, Gulf and Jackson	18
Fifteenth Circuit—Palm Beach	19
Sixteenth Circuit—Lake and Sumter	19
Seventeenth Circuit—Orange and Osceola	19
Eighteenth Circuit—Manatee	19
Nineteenth Circuit—DeSoto, Hardee and Highlands	20
Twentieth Circuit—Monroe	20
Twenty-First Circuit—Indian River, Martin, Okeechobee and St. Lucie	20
Twenty-Second Circuit—Broward	20
Twenty-Third Circuit—Brevard and Seminole	21
Twenty-Fourth Circuit—Citrus and Hernando	21
Twenty-Fifth Circuit—Flagler, Putnam and St. Johns	21
Twenty-Sixth Circuit—Baker, Bradford and Union	22
Twenty-Seventh Circuit—Sarasota	22
Twenty-Eighth Circuit—Bay	22
Civil Court of Record, Judges	10
Compiled Statement of All Cases Handled	38
Counties and County Seats	12
County Officers	12
County Solicitors	11
County Solicitors' Reports:	
Dade County, Court of Crimes	127
Dade County, Criminal Court of Record	126
Duval County, Criminal Court of Record	127
Escambia County, Court of Record	129

County Solicitors' Report (Continued)

	Page
Hillsborough County, Criminal Court of Record	130
Monroe County, Criminal Court of Record	131
Orange County, Criminal Court of Record	132
Palm Beach, Criminal Court of Record	133
Polk County, Criminal Court of Record	134
Court Calendar	14
Court of Crimes, Judges	10
Court of Record, Judge	9
Criminal Cases, Tabulated Report	55
Criminal Court of Record, Judges	9

E.

Expenditures	36-37
--------------------	-------

G.

General Scope of Duties, Attorney General	24
---	----

J.

Judges:

Circuit Court	9
Civil Court of Record	10
Court of Crimes	10
Court of Record	9
Criminal Court of Record	9
Judicial Circuits	14-22
Judicial Department	8
Justices of the Supreme Court	8

L.

Letter of Transmittal	23
-----------------------------	----

S.

State Attorneys	10
State Attorneys' Reports:	
First Judicial Circuit	68
Second Judicial Circuit	71
Third Judicial Circuit	77
Fourth Judicial Circuit	83
Fifth Judicial Circuit	85
Sixth Judicial Circuit	87
Seventh Judicial Circuit	89
Eighth Judicial Circuit	91
Ninth Judicial Circuit	93

States' Attorneys Report (Continued)

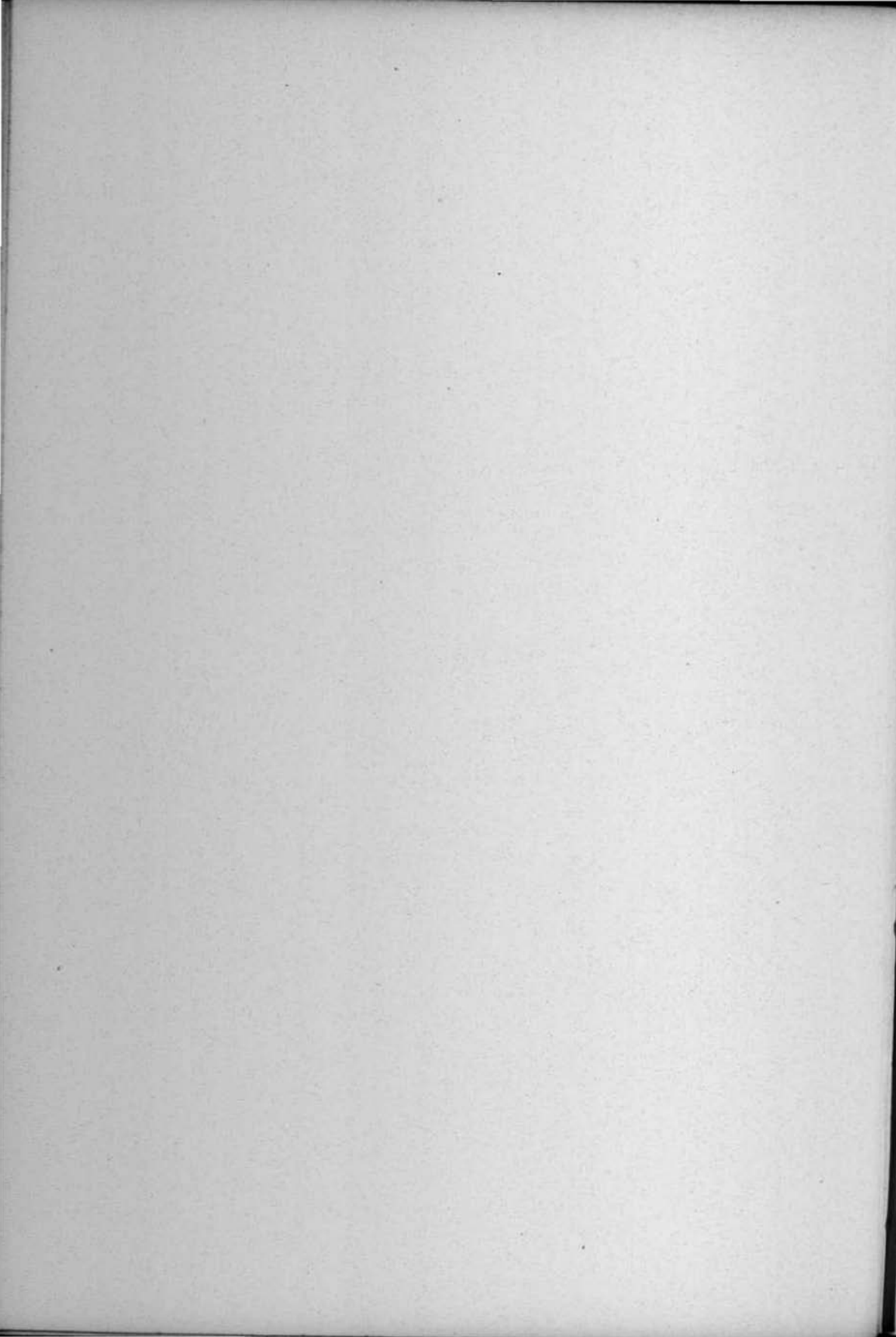
	Page
Tenth Judicial Circuit	95
Eleventh Judicial Circuit	96
Twelfth Judicial Circuit	97
Thirteenth Judicial Circuit	101
Fourteenth Judicial Circuit	102
Fifteenth Judicial Circuit	104
Sixteenth Judicial Circuit	105
Seventeenth Judicial Circuit	106
Eighteenth Judicial Circuit	108
Nineteenth Judicial Circuit	109
Twentieth Judicial Circuit	111
Twenty-First Judicial Circuit	111
Twenty-Second Judicial Circuit	113
Twenty-Third Judicial Circuit	114
Twenty-Fourth Judicial Circuit	116
Twenty-Fifth Judicial Circuit	118
Twenty-Sixth Judicial Circuit	120
Twenty-Seventh Judicial Circuit	122
Twenty-Eighth Judicial Circuit	123
State Law Department	7
Supreme Court Justices	8

T

Table of Contents	3
-------------------------	---

PART II

Opinions



PART II



PREFACE

Part II of this report contains copies of certain opinions rendered by me during the past two years. I reaffirm these published opinions and they shall be considered as superseding all other opinions given by me upon the subjects contained therein. I have rendered a great many opinions during the past two years that are not included in the report. I have sought to eliminate from the report all opinions of a purely local nature or application, as well as all opinions that for one reason or another cannot be used in the future.

The arrangement of the opinions is by subjects, which is a radical departure from the arrangement of former reports. This change is a result of my efforts to improve the usefulness of the book to the casual user, as well as to those who refer to it frequently. The new arrangement represents the consensus of opinion of the many users of the book of whom inquiry was made.

I have added a new feature to the index, i. e., a table of statutes and constitutional provisions cited or referred to in the opinions. This table will save much time in using the report.

CARY D. LANDIS,
Attorney General of Florida.

Tallahassee, Florida,
January First, A. D.,
Nineteen Hundred Thirty-five.

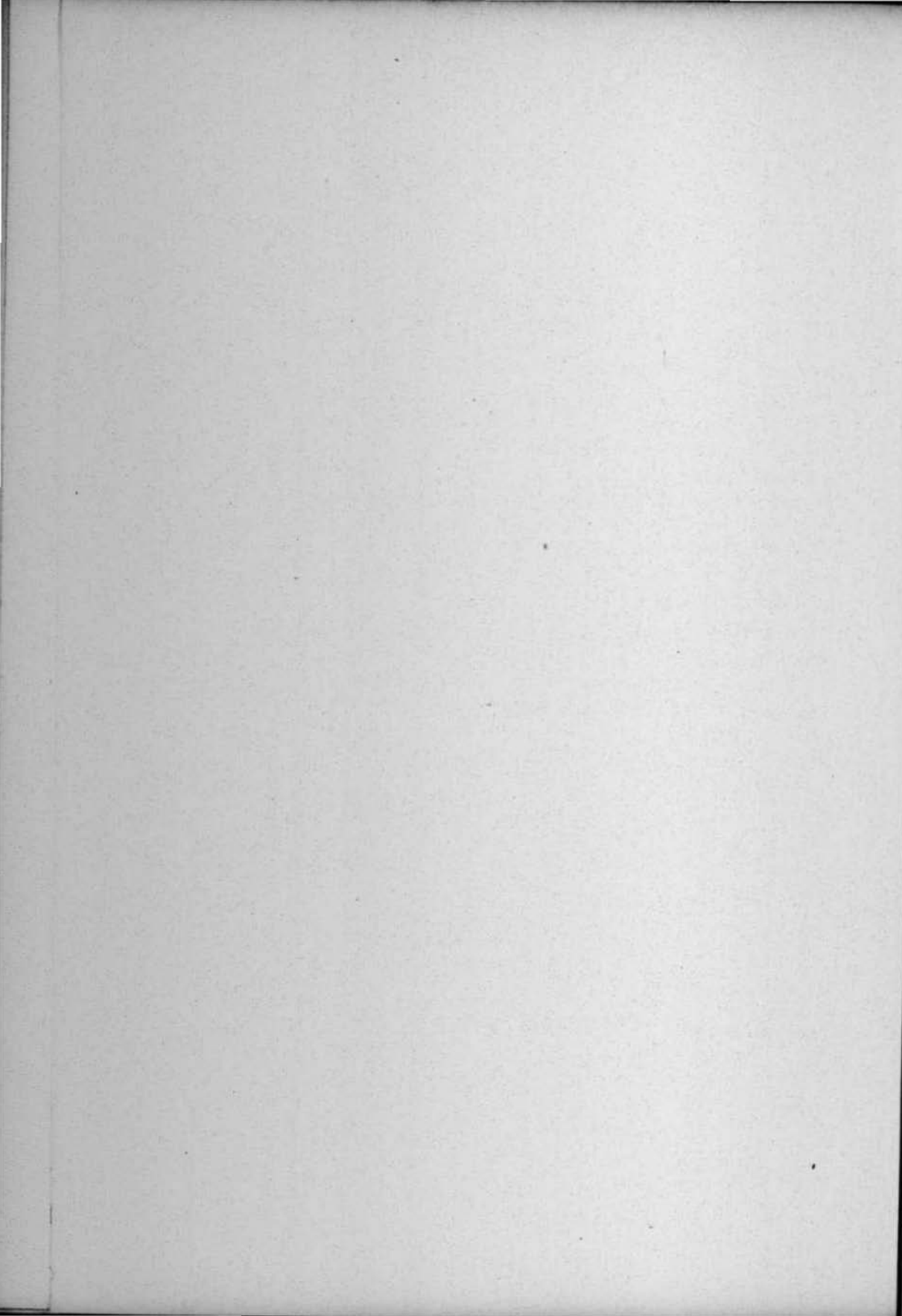


Table of Contents

PART II

CHAPTER I

TAXES

	Page
Section 1. License Taxes	3
Section 2. Documentary Stamp Tax	38
Section 3. Intangible Personal Property Tax	51
Section 4. Inheritance or Estate Taxes	61
Section 5. Motor Vehicle Taxes	63
Section 6. Gasoline Taxes	71
Section 7. Futch Bill (Chapter 16252, Acts of 1933)	80
Section 8. Exemptions	87
Section 9. Delinquent Taxes	102
Section 10. Property in Hands of Court Receiver	124
Section 11. School Taxes—Payment with Certificates of Indebtedness	128
Section 12. Delinquent Tax List	132
Section 13. Miscellaneous	139

CHAPTER II

STATE BOARD OF ADMINISTRATION

Section 1. Kanner Bill	153
Section 2. Bonds	161
Section 3. Miscellaneous	189

CHAPTER III

COUNTY OFFICERS

Section 1. In General	193
Section 2. Budget Commissions	201
Section 3. County Commissioners	207
Section 4. Tax Assessors	221
Section 5. Tax Collectors	233

BIENNIAL REPORT OF THE ATTORNEY GENERAL

	Page
Section 6. Clerks of Circuit Court	242
Section 7. County Judges	254
Section 8. Sheriffs	259
Section 9. Justices of the Peace	268
Section 10. Constables	272

CHAPTER IV

BANKS AND BANKING

Section 1. National Banks	277
Section 2. Depository of Public Funds	285
Section 3. Liquidators	288
Section 4. Stock Assessments	299
Section 5. Power to Pledge Assets	301
Section 6. Miscellaneous	304

CHAPTER V

INTOXICATING LIQUORS

Section 1. In General	313
Section 2. Beverage Act	333
Section 3. Alcohol	337

CHAPTER VI

ELECTIONS

Section 1. General	343
Section 2. Primary	355
Section 3. Special	365
Section 4. Local Option	369

CHAPTER VII

APPROPRIATIONS	379
----------------------	-----

CHAPTER VIII

SCHOOLS

Section 1. Teachers	397
Section 2. Special Tax School District	403
Section 3. Miscellaneous	415

BIENNIAL REPORT OF THE ATTORNEY GENERAL

CHAPTER IX

STATE BOARDS AND COMMISSIONS

	Page
Section 1. Board of Health	435
Section 2. Racing Commission	440
Section 3. Hotel Commission	449
Section 4. Nurses	452
Section 5. Board of Barber Examiners	454
Section 6. Optometrists	456
Section 7. Live Stock Sanitary Board	457
Section 8. Miscellaneous	459

CHAPTER X

INSURANCE AND SURETIES

Section 1. Insurance	469
Section 2. Sureties	479

CHAPTER XI

CONSERVATION DEPARTMENT

Section 1. Hunting	495
Section 2. Fishing	499
Section 3. Miscellaneous	506

CHAPTER XII

COURTS

Section 1. Indictments and Information	511
Section 2. Circuit Judges	515
Section 3. State Attorney	518
Section 4. Probate Act of 1933	521
Section 5. Miscellaneous	523

CHAPTER XIII

MISCELLANEOUS

Section 1. Building and Loan Associations	529
Section 2. Cities and Towns	536
Section 3. Citizens and Citizenship	540
Section 4. Convicts	546
Section 5. Corporations	551
Section 6. Holidays	557
Section 7. Inspection Laws	559

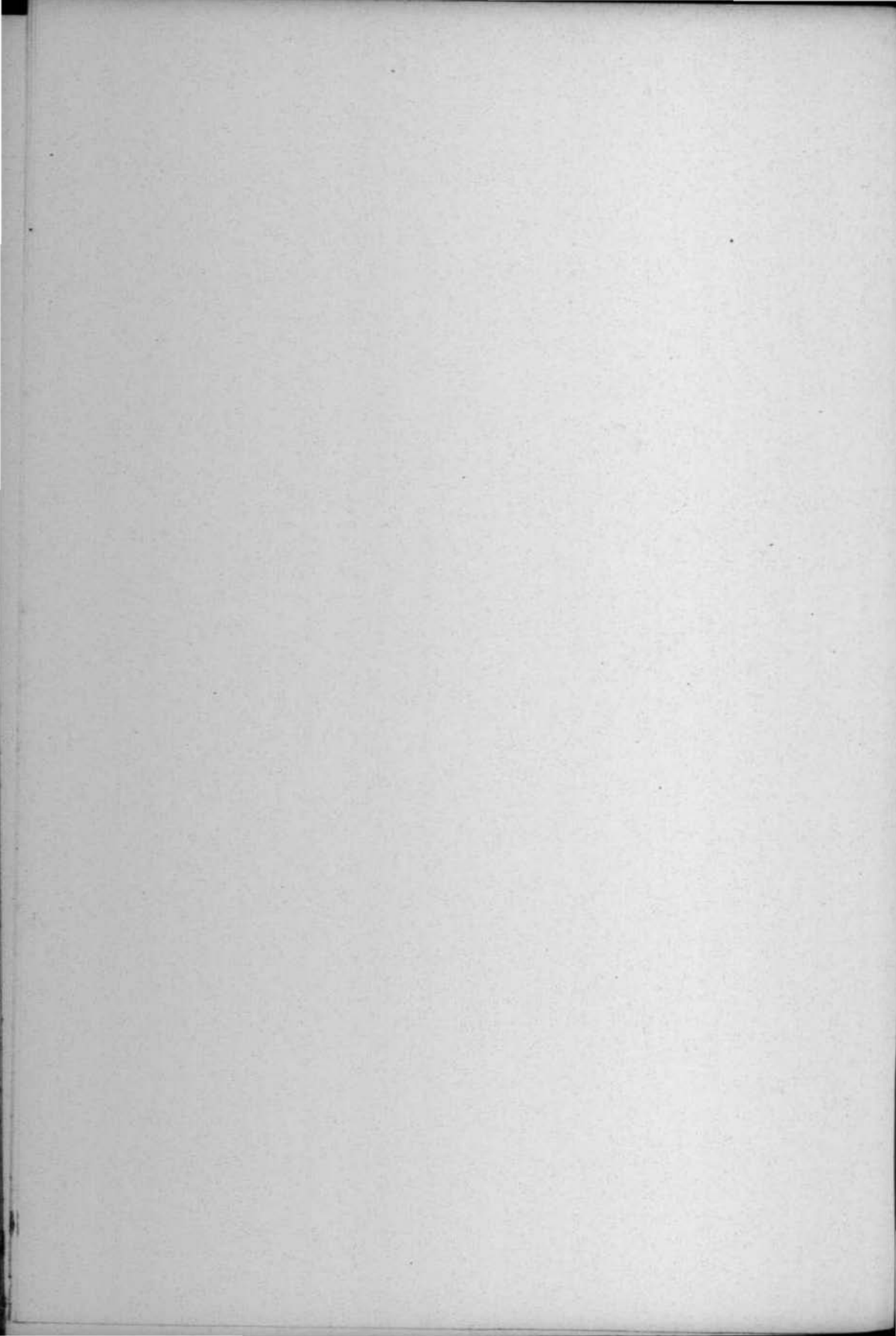
BIENNIAL REPORT OF THE ATTORNEY GENERAL

	Page
Section 8. Motor Vehicles	565
Section 9. National Guard	570
Section 10. Nepotism	571
Section 11. Newspapers	581
Section 12. Notary Publics	582
Section 13. Pensions	585
Section 14. Public Records	588
Section 15. Securities Act (Blue Sky)	590
Section 16. Slot Machines	597
Section 17. Small Loan Law	598
Section 18. State Auditors	601
Section 19. State Land	603
Section 20. State Officers and Employees	610
Section 21. State Road Department	615
Section 22. Miscellaneous	624

CHAPTER I

TAXES

	Page
Section 1. License Taxes	3
Section 2. Documentary Stamp Tax	38
Section 3. Intangible Personal Property Tax	51
Section 4. Inheritance or Estate Taxes	61
Section 5. Motor Vehicle Taxes	63
Section 6. Gasoline Taxes	71
Section 7. Futch Bill (Chapter 16252 Acts of 1933)	80
Section 8. Exemptions	87
Section 9. Delinquent Taxes	102
Section 10. Property in Hands of Court Receiver	124
Section 11. School Taxes—Payment With Certificates of Indebtedness	128
Section 12. Delinquent Tax List	132
Section 13. Miscellaneous	139



SECTION 1

LICENSE TAXES

May 16, 1934.

LICENSE TAX AND BOND REQUIRED OF TAX COLLECTION
AGENCY*Dear Sir:*

This is in response to your request of May 16th.

It is my opinion that where an individual firm, partnership or corporation has qualified under the Florida Securities Commission as a bond broker, and such parties desire to engage in the payment of taxes and special assessments, as defined under Sections 1336-1342, Compiled General Laws of Florida, 1927, it is necessary for such parties to qualify under these Sections of the statutes.

Where parties qualify under these Sections of the statutes as a tax collecting agency and buy and sell no bonds other than for the payment of such taxes and special assessments, it is my opinion that it is necessary, nevertheless, for such parties to qualify under the Florida Securities Commission.

It is my opinion that it is the duty of the County Tax Collector and Clerk of the Circuit Court to ascertain and determine that any tax collection agency doing business with their offices be properly qualified as such agency under the Sections of the statute referred to above; and if not so qualified, that their offices should not engage in business with such agency until it is properly qualified.

April 24, 1933.

SHRIMP CANNING PLANT

Dear Sir:

This refers to your verbal request for my opinion on the subject, "Application of License Tax to Shrimp Canning Plants," and in reply I beg to advise that in my opinion Section 1827 of the Compiled General Laws of Florida, 1927, which requires a license tax of all wholesale fish dealers is applicable to a wholesale shrimp dealer, and that Shrimp Canning Plants should be required to pay the license provided for by said Section.

May 3, 1933.

LICENSEES OF RACE TRACK NOT REQUIRED TO PAY TAX ON
WESTERN UNION TELEGRAPH EMPLOYEES*Dear Sir:*

Replying to your letter of the 2nd instant with relation to the requirement for payment of tax on free passes under the provisions of

LICENSE TAXES

Section 9 of Chapter 14832, Laws of Florida, Acts of 1931, it is my opinion that this requirement applies only in cases of passes issued for attending races.

The applicable portion of the Racing Act is as follows:

"If any free passes or complimentary admission cards shall be issued to guests by the licensee, the licensee of such track shall pay to the Commission the same tax upon such complementary admission cards as if same were sold at the regular and usual admission rate; . . ."

This evidently applies only in case of guests attending the races. Telegraph operators who attend only for the purpose of sending, receiving and delivering messages are not guests attending the races, and were evidently not intended to come within this provision of the Act.

It is my opinion therefore, that the licensees of race tracks are not required to pay the tax on admission of employees of Western Union Telegraph Company, who enter solely for the purpose of carrying on the business of the telegraph company.

May 4, 1933.

AMOUNT OF ADMISSION TAX REQUIRED OF LICENSEE

Dear Sir:

The admission tax imposed by Section 9 of Chapter 14832 is upon "all moneys received each day from admissions paid by persons attending such races," and is required to be paid by the licensee, that is, the person, association or corporation authorized to conduct race meetings under said Act.

There is no requirement that this tax be paid by the person paying for such admission. I note in your letter of the 3rd instant that the amount paid upon admission is as follows:

Established price	\$1.00
Government tax .....	.10
State tax .....	.15
Total	\$1.25

The Federal admission tax is required to be paid by the person paying for the admission. It is my opinion that based upon the illustration used in your letter, from which the above is taken, the State tax should be 15% of \$1.15 for each such admission. The person attending is required to pay \$1.15 plus the government tax of 10¢ for the privilege of being admitted, and the tax being imposed upon the licensee by law, the State tax would be 15% of \$1.15.

LICENSE TAXES

November 30, 1934.

BUILDING CONTRACTORS WHO DO NOT HAVE ESTABLISHED
PLACES OF BUSINESS*Dear Sir:*

I have your letter in which you request my opinion as to whether or not building contractors, doing business in the State of Florida, who do not have an established place of business, are required to pay a license tax under Section 1130, Compiled General Laws of Florida, 1927.

My predecessor in office, the Honorable Fred H. Davis, rendered an opinion on this subject on March 2, A. D. 1931. (See page 696, Biennial Report of the Attorney General, 1931-1932.) I adopt as my opinion the following quotation from that opinion, to-wit:

" I beg to advise that the license tax on contractors provided for by Section 1130, Compiled General Laws, applies to any person who holds himself out as a contractor.

"It makes no difference whether he has a regular office or established place of business or not. The only exception to this is that of a 'building' contractor who would not be subject to the tax where he has no established place. The term 'building' contractor would be understood to mean a contractor engaged in erecting a building of some kind. All other kinds of contracts, such as construction and bridge constructions, are subject to license tax, whether they have an established place or not.

"The reason the so-called 'building' contractors are not required to pay license tax where they have no established place is because contractors engaged in erecting buildings usually have an established place in one county, but put the buildings up in several surrounding counties.

"It was the intention of the law not to have a contractor to be required to pay a license tax merely for building a house or putting up a building in a county in which he had no established place. By an established place is meant any place, even a residence of the contractor, where he holds himself out as being ready, able and willing to accept employment as a contract."

December 1, 1934.

LICENSE TAX NOT REQUIRED OF PERSONS OPERATING
AUTOMOBILE REPAIR SHOP OUTSIDE OF
MUNICIPALITY*Dear Sir:*

I have your letter requesting my opinion as to whether or not a person, operating an automobile repair shop located outside a city or town, is required to pay a license tax.

LICENSE TAXES

Section 1067, Compiled General Laws, 1927, is the only Section of the statutes which requires a license to be paid for operating such a place of business. The applicable part of the statute reads as follows:

"Automobile garages for keeping, storing, caring for, repair-in automobiles or other horseless vehicles belonging to the public, shall pay a license tax in towns of less than 10,000 population of \$10.00, and in towns of over 10,000, \$25.00."

You will note that the statute only requires a license tax to be paid when the business is conducted in *towns* of less than 10,000, and when conducted in *towns* of more than 10,000 population. The word *towns* is defined by our statutes (Section 2936, C. G. L.) as a municipal government which, at the time of its incorporation, has less than 300 registered voters, whereas, a city is defined as a municipal government which, at the time of its incorporation, has more than 300 registered voters. It is my opinion that the Legislature in enacting Section 1067, Compiled General Laws, *supra*, used the word *towns* to mean municipalities, and intended to include within that term cities and towns as defined by Section 2936, Compiled General Laws, *supra*.

Section 1067, Compiled General Laws, *supra*, requires a license tax to be paid for operating an automobile repair shop *only* when operated in a municipality.

It is my opinion that a person operating an automobile repair shop located outside of a municipality (city or town as defined by Section 2936, C. G. L., *supra*) is not required to pay a State and County license tax.

November 30, 1934.

LICENSE REQUIRED OF JOB PRINTING OFFICE NOT APPLICABLE
TO MULTIGRAPHING OFFICE

Dear Sir:

I have your letter in which you request my opinion as to whether or not Section 1184, Compiled General Laws of Florida, 1927, which requires owners or managers of job printing offices to pay a license tax, includes owners or managers of a multigraphing office.

A multigraph is defined by the New Century Dictionary of the English language as being: "A kind of typesetting and printing machine, as for office use, for printing circulars, imitation typewritten letters, etc." A job printing office does a general printing business, except it does not ordinarily print a newspaper. The work done by a multigraphing office has some of the characteristics of work done by a job printing office but multigraphing and printing are essentially different. Multigraphing, in a very limited sense, may be said to be job printing but job printing, as used in Section 1184, was not intended to cover multigraphing.

LICENSE TAXES

It is my opinion that Section 1184, *supra*, which levies a tax upon owners or managers of a job printing office does not apply to owners or managers of a multigraphing office.

November 28, 1934.

EXEMPTION FROM PEDDLER'S LICENSE IN SECTION 1279 (60)
C. G. L. 1934 SUPPLEMENT

Dear Sir:

I have your letter in which you request my opinion upon the question of whether or not the exemption in Section 1279 (60), Compiled General Laws of Florida, 1934 Supplement, of certain persons from occupational license taxes applies generally to such persons or is confined to such persons as are engaged in the businesses set forth in the Section.

The exemption referred to is not a general exemption of all persons named therein from all peddlers' occupational license taxes but is a proviso, and as such, limits the license required by the first part of the Section. It is my opinion that the exemption from occupational license taxes granted by this Section applies to only such persons as are engaged in the businesses set forth in the Section.

November 1, 1934.

PURCHASER OF SACKS AND BAGS

Dear Sir:

This refers to your favor of November first in which you state that Mr. ——— advises that he is engaged in the business of purchasing used sacks or bags where ever they may be found, and you request my opinion as to whether or not he would be required to pay a license tax as a junk dealer under Section 1183, Compiled General Laws of Florida.

Assuming that Mr. ——— engages exclusively in the business of purchasing used bags, then it is my opinion that he would not come within the term of junk dealer, and would not be required to pay a license tax under Section 1183, Compiled General Laws of Florida.

Junk, as defined in the Dictionary, is old iron, glass, ropes, cotton, old papers, etc., and it is my opinion that if Mr. ——— simply purchases used bags that he does not come within the terms of the Statute, and no license should be required of him.

You further ask if he should be required to pay an occupational license tax. If he engages exclusively in the purchase of used bags, I know of no section of the law which apparently covers this business.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
LICENSE TAXES

November 23, 1934.

RAILROADS REQUIRED TO PAY ON TRACKAGE

Dear Sir:

I have your letter in which you request me to advise you "if railroads doing business in this State and operating over tracks which have been leased from other Railroad Companies or Municipalities should be required to pay" the license tax set forth in Section 1238, Compiled General Laws of Florida, 1927.

The pertinent part of Section 1238, *supra*, reads as follows:

"Any railroad company doing business in this State shall pay annually on the first day of October, to the Comptroller of the State, a sum equal to \$10.00 per mile for each and every mile of its railroad tracks in this State, including branches, switches, spurs and side tracks, *as shown by the last assessment of the said railroad company for property taxation, as a license tax . . .*". (Italics supplied).

The amount of the license tax is based upon the number of miles of track "as shown by the last assessment of the said railroad company for property taxation." This confines the liability for the license tax to the railroad company that owns the tracks since the assessment for property taxation is made against the owner of the property. (Section 960 Compiled General Laws).

It is my opinion that the license tax set forth in Section 1238, *supra*, can only be required of the railroad company who owns the tracks and that the State cannot enforce the payment of the license tax by the lessee of the tracks.

October 30, 1934.

SECTION 1210, C. G. L.—LICENSE TAX ON WHOLESALE DEALERS
IN ILLUMINATING OR LUBRICATING OILS

Dear Sir:

I have your letter of October 2nd, in which you make inquiry as to whether Section 1210, Compiled General Laws of Florida, 1927, the same being Section 6 of Chapter 6421, Laws of Florida, Act of 1913, has been repealed or modified. This Section requires a wholesale dealer in illuminating or lubricating oils to pay an annual license tax of \$25.00 for each place of business.

I have before me a letter from Honorable Nalls Berryman, Assistant State Chemist, which was in response to my inquiry, which states that chemists do not consider illuminating or lubricating oils as being gasoline or like products of petroleum. Mr. Berryman further states:

"The products, illuminating and lubricating oils, have distinctly different chemical and physical properties from gasoline

LICENSE TAXES

or other like products of petroleum. They each have their distinctive specification and they are used for different purposes.

"All petroleum products have some similarity when compared with an entirely foreign material, but if the comparison is to be made between products of petroleum I would say that these products, illuminating and lubricating oils and gasoline are considered as unlike products of petroleum."

From the above and foregoing, it is my opinion that Section 1210, Compiled General Laws of Florida 1927, has not been repealed or modified, and is in full force and effect at this time.

October 19, 1934.

DISABLED VETERANS EXEMPTION FROM LICENSE TAX LIMITED
BONA FIDE RESIDENT OF STATE

Dear Sir:

In your letter of the 15th instant, you ask to be advised if disabled veterans are exempt from municipal license, who live in other counties of this State, and if disabled veterans from other States can claim exemption.

Any bona fide permanent resident elector of the State of Florida, who served as an officer or enlisted man in the United States Army, Navy or Marine Corps during the World War, between April 6, 1917, and November 11, 1918, or in the Spanish-American War between April 21, 1886, and July 4, 1902, and who was honorably discharged from the service of the United States, and who at the time of his application for license shall be disabled from performing manual labor, is entitled to exemption from the payment of a license tax, State, county and municipal, as provided for in and by Chapter 16299, Laws of Florida, Acts of 1933, and to the extent therein authorized, regardless of whether such disabled veteran resides in the municipality or county in which the license is sought.

A non-resident of the State is not entitled to a free license by reason of being a disabled veteran.

October 4, 1934.

MOTOR VEHICLES NOT DEEMED "FOR HIRE," WHEN NOT USED
IN TRANSPORTING HORTICULTURAL OR AGRICULTURAL
PRODUCTS OR SUPPLIES

Dear Sir:

Replying to your favor of October 2nd., permit me to say that Section 3 of Chapter 16085, Acts of 1933, (page 489) contains the following provision, to-wit:

"Provided, however, that vehicles used in the transportation of horticultural and/or agricultural products, or used in the

LICENSE TAXES

transportation of horticultural or agricultural supplies *direct to the growers or consumers of said supplies or to associations of said growers and consumers* shall not be deemed for hire vehicles within the terms of this Act."

I think that fertilizer may properly be held to be agricultural and horticultural "supplies," and that a motor vehicle used for the purposes, and in the manner stated in the provision of the statute quoted, should not be deemed a "for hire" vehicle within the terms of Chapter 16085, Acts of 1933, which is known as the Motor Vehicle License Law.

August 27, 1934.

MANUFACTURER OF FROZEN DESSERTS WHO SELLS ONLY
THROUGH OWN RETAIL STORES CLASSIFIED AS RETAILER

Dear Sir:

I am in receipt of your letter of the 23rd inst., with reference to licenses under the Frozen Desserts Law, Chapter 16,047, Laws of Florida, Acts of 1933. You make specific inquiry as to whether a manufacturer who confines the distribution of his product to his own retail stores (selling none through other channels) is to be classified as a wholesaler or as a retailer.

Your attention is called to that part of Section 3 of said Act reading as follows:

"The license fee shall be Fifty Dollars for each manufacturing plant shown in the application of frozen dessert manufacturers doing a wholesale business and ten dollars for each retail store shown in the application of a retail manufacturer."

Your attention is further called to Paragraph (a) of Section 7 of said Act reading as follows:

"No person shall sell, advertise or offer or expose for sale any frozen dessert unless the manufacturer thereof is a licensee under the provisions of this article."

Since the above manufacturer is manufacturing only for his own stores, and is not selling or distributing his products to others except by retail in his own stores, it is my opinion that such manufacturer should be classified as a retailer, and is required to pay a license fee of Ten Dollars for each retail store through which he distributes his products.

June 14, 1934.

MANUFACTURERS OF FROZEN DESSERTS

Dear Sir:

I am in receipt of your letter of the 5th instant, advising that an ice cream manufacturer in Americus, Georgia, selling ice cream to a

LICENSE TAXES

drug store in Florida and delivering same by truck, has refused to pay the wholesaler's license, denying your authority to collect on the ground that the transaction referred to is interstate in character. You state further that a number of ice cream manufacturers outside of this State have purchased licenses.

The title to Chapter 16,047, reads as follows:

"AN ACT Defining Ice Cream, Frozen Custard, Ice Milk, Milk Sherbet, Ice Sherbet; Frozen Desserts; Regulating the Manufacture and Sale of the Same; Prohibiting the Possession, Sale or Offering for Sale of Adulterated, Misbranded or Imitations of the Foregoing Products, and Providing Penalties for the Violation of This Act."

Section 3 of said Act, with reference to licenses, reads as follows:

"The license fee shall be Fifty Dollars for each manufacturing plant shown in the application of frozen dessert manufacturers doing a wholesale business and ten dollars for each retail store shown in the application of a retail manufacturer. There shall be no fee for the issuance of a license to a hotel, restaurant or boarding house, for the manufacture of frozen desserts sold to the patrons thereof for consumption exclusively on the premises where manufactured. The fee shall be tendered to the Commissioner with the application, and upon the issuance of the license shall be remitted by the Commissioner to the State Treasury. All such fees shall be credited to the frozen desserts enforcement fund, and shall be appropriated annually to the department for the enforcement of this Act."

Paragraph (a) of Section 7 of said Act reads as follows:

"No person shall sell, advertise or offer or expose for sale any frozen dessert unless the manufacturer thereof is a licensee under the provisions of this article."

Upon reading the statute as a whole, it appears that the same is not intended as a revenue measure but for the purpose of police regulation, and the "license fee" may properly be considered as a police inspection fee. It is, therefore, my opinion that the provisions of said Act may be enforced against out-of-State manufacturers making sales and deliveries in this State of frozen desserts and other products mentioned in the Act.

June 11, 1934.

LICENSE TAX ON RADIO DEALERS SELLING AUTOMOBILE
RADIOS

Dear Sir:

This is in response to your communication of June 2, 1934, in which you inquire whether or not an automobile dealer who sells automobile radios is required to take out a radio dealer's license.

LICENSE TAXES

It is my opinion that such individual is a dealer in radios and is required to pay the license tax fixed by statute. See Section 1279 (75), 1934 Supplement to 1927 Compiled General Laws.

January 19, 1934.

LICENSE REQUIRED OF PIANO TUNERS EMPLOYED BY A
MUSIC STORE

Dear Sir:

I have your letter of January 12th, in which you request my opinion upon the following question:

If a music store has obtained a license under Section 1227, Compiled General Laws of Florida, 1927, as a piano tuner and employs a person to tune pianos will this person be required to obtain a license as a piano tuner?

It is my opinion that a person who engages in the business of piano tuning, whether on his own account or as an employee, will be required to obtain a license under Section 1227, *supra*. The fact that the employer of a piano tuner may have a license does not relieve the latter from obtaining his license.

January 10, 1934.

EXEMPTION OF CARNIVALS AND OTHER BUSINESSES WHEN
OPERATING UNDER CONTRACT WITH FAIR ASSOCIATION

Dear Sir:

I have your letter of January 5th, in which you request my opinion upon the following questions:

FIRST

If a carnival company contracts with a Fair Association organized under Chapter 7388, Laws of Florida, Acts of 1917, being Sections 6516 through 6526, Compiled General Laws of Florida, 1927, to operate its carnival for the duration of the Fair or Exhibition held by the Fair Association, or for a shorter period of time, and under contract the Association is to receive a minimum guaranteed sum or a percentage of gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, would the carnival be exempt from obtaining license taxes required under the laws of Florida?

Hon. Fred H. Davis, (now Chief Justice of the Supreme Court of Florida), my predecessor in office, wrote an exhaustive opinion on January 29, 1931, upon the subject of your first question. I quote the following from that opinion and adopt the quoted part as my own opinion:

"Section 6522 of the Compiled General Laws provides that all moneys and property of Fair Associations incorporated under the provisions of Section 6516, *et seq.*, Compiled General Laws,

LICENSE TAXES

shall be so long as used for the purpose of the Fair Association exempt from *all forms* of taxation.

"A contract made by a Fair Association with a carnival company in consideration of which the carnival company produces certain shows and exhibitions for the fair association for a certain consideration would be 'property' within the meaning of Section 6522. Also the money taken in by such fair association pursuant to such contract would be money which under the terms of Section 6522 is expressly exempt from *all forms* of taxation. I am, therefore, of the opinion that where a carnival company contracts with a fair association incorporated under Section 6516, et seq. to operate its carnival for a period of two weeks within an amusement park owned or controlled by the fair association, the association to receive a minimum guaranteed sum or a percentage of the gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, that such carnival would be deemed a mere agent of the fair association for the purpose of putting on the shows mentioned in the contract and would not be subject to the license tax provided by Section 1080 of the Compiled General Laws, or other provisions of the Compiled General Laws relating to taxation of shows. The fair association itself having been granted an express exemption from *all forms* of taxation would likewise not be subject to the tax.

"* * * *

"The foregoing construction has been placed on the law for a number of years past. It must be borne in mind, however, that the carnival company is liable for all the tax provided for in Section 1244 of the Compiled General Laws with reference to any show, device or amusement which is not specifically covered by the contract with the . . . fair association under such circumstances that the show or device is really being operated for the . . . fair association, subject to its orders and control rather than as an independent operation seeking the patronage of the public."

SECOND

If the Fair Association rents space in the Fair buildings and the Fair grounds to persons who will operate various businesses, including restaurants, and sell merchandise of various kinds, will these businesses be exempt from license taxes required of such businesses when operated outside of the Fair grounds?

If the businesses referred to in your second question have contracts with a Fair Association incorporated under Section 6516, et seq., Compiled General Laws of Florida, 1927, to operate for the duration of the Fair or exhibition held by the Fair Association or for a shorter period of time, the businesses in the buildings or grounds owned or controlled by the Fair Association, and the Association is to receive a minimum

12 BIENNIAL REPORT OF THE ATTORNEY GENERAL
LICENSE TAXES

It is my opinion that such individual is a dealer in radios and is required to pay the license tax fixed by statute. See Section 1279 (75), 1934 Supplement to 1927 Compiled General Laws.

January 19, 1934.

**LICENSE REQUIRED OF PIANO TUNERS EMPLOYED BY A
 MUSIC STORE**

Dear Sir:

I have your letter of January 12th, in which you request my opinion upon the following question:

If a music store has obtained a license under Section 1227, Compiled General Laws of Florida, 1927, as a piano tuner and employs a person to tune pianos will this person be required to obtain a license as a piano tuner?

It is my opinion that a person who engages in the business of piano tuning, whether on his own account or as an employee, will be required to obtain a license under Section 1227, supra. The fact that the employer of a piano tuner may have a license does not relieve the latter from obtaining his license.

January 10, 1934.

**EXEMPTION OF CARNIVALS AND OTHER BUSINESSES WHEN
 OPERATING UNDER CONTRACT WITH FAIR ASSOCIATION**

Dear Sir:

I have your letter of January 5th, in which you request my opinion upon the following questions:

FIRST

If a carnival company contracts with a Fair Association organized under Chapter 7388, Laws of Florida, Acts of 1917, being Sections 6516 through 6526, Compiled General Laws of Florida, 1927, to operate its carnival for the duration of the Fair or Exhibition held by the Fair Association, or for a shorter period of time, and under contract the Association is to receive a minimum guaranteed sum or a percentage of gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, would the carnival be exempt from obtaining license taxes required under the laws of Florida?

Hon. Fred H. Davis, (now Chief Justice of the Supreme Court of Florida), my predecessor in office, wrote an exhaustive opinion on January 29, 1931, upon the subject of your first question. I quote the following from that opinion and adopt the quoted part as my own opinion:

"Section 6522 of the Compiled General Laws provides that all moneys and property of Fair Associations incorporated under the provisions of Section 6516, et seq., Compiled General Laws,

LICENSE TAXES

shall be so long as used for the purpose of the Fair Association exempt from *all forms* of taxation.

"A contract made by a Fair Association with a carnival company in consideration of which the carnival company produces certain shows and exhibitions for the fair association for a certain consideration would be 'property' within the meaning of Section 6522. Also the money taken in by such fair association pursuant to such contract would be money which under the terms of Section 6522 is expressly exempt from *all forms* of taxation. I am, therefore, of the opinion that where a carnival company contracts with a fair association incorporated under Section 6516, et seq. to operate its carnival for a period of two weeks within an amusement park owned or controlled by the fair association, the association to receive a minimum guaranteed sum or a percentage of the gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, that such carnival would be deemed a mere agent of the fair association for the purpose of putting on the shows mentioned in the contract and would not be subject to the license tax provided by Section 1080 of the Compiled General Laws, or other provisions of the Compiled General Laws relating to taxation of shows. The fair association itself having been granted an express exemption from *all forms* of taxation would likewise not be subject to the tax.

"* * * *

"The foregoing construction has been placed on the law for a number of years past. It must be borne in mind, however, that the carnival company is liable for all the tax provided for in Section 1244 of the Compiled General Laws with reference to any show, device or amusement which is not specifically covered by the contract with the . . . fair association under such circumstances that the show or device is really being operated for the . . . fair association, subject to its orders and control rather than as an independent operation seeking the patronage of the public."

SECOND

If the Fair Association rents space in the Fair buildings and the Fair grounds to persons who will operate various businesses, including restaurants, and sell merchandise of various kinds, will these businesses be exempt from license taxes required of such businesses when operated outside of the Fair grounds?

If the businesses referred to in your second question have contracts with a Fair Association incorporated under Section 6516, et seq., Compiled General Laws of Florida, 1927, to operate for the duration of the Fair or exhibition held by the Fair Association or for a shorter period of time, the businesses in the buildings or grounds owned or controlled by the Fair Association, and the Association is to receive a minimum

LICENSE TAXES

guaranteed sum or a percentage of the gross receipts taken in by the various businesses as a part of the contract price, then such businesses would be deemed mere agents of the Fair Association for the purposes mentioned in the contract and would not be subject to the license taxes required by the laws of the State of Florida of such businesses when operated without a contract from a Fair Association. The Fair Association itself having been granted an express exemption from all forms of taxation would likewise not be subject to the license taxes.

December 15, 1933.

NOT REQUIRED FOR PARKING CARS OUTSIDE RACE TRACKS

Dear Sir:

Replying to your favor of December 8th., permit me to say that it is my opinion that under the provisions of Section 9-B of Chapter 14832, Acts of 1931 persons parking cars for "tips" outside enclosure of race tracks, where such persons are not in any manner connected with the operation of the race track cannot be required to procure a license.

August 11, 1933.

BOATS CARRYING EXPRESS REQUIRED TO PAY GROSS RECEIPTS TAX

Dear Sir:

Replying to your letter of August 7th, with which you enclose correspondence from the Tax Collector of Seminole County, as to whether there is any statute under which boats engaged in the transportation of freight, express and passengers for hire, using Deisel engines which taxes them out of the category of steamboats, may be required to pay a tax, permit me to say:

I am under the impression that the Company referred to as operating this class of boats is the St. Johns River Transportation Company and not the St. Johns River Line Company. Upon investigation at the office of the Secretary of State, I find that the S. Johns River Transportation Company is chartered by the State of Florida, but I do not find that the St. Johns River Line Company has been so chartered.

I examined the charter of the St. Johns River Transportation Company, and find that the Company was organized for the purpose of among other things of owning and operating boats and boat lines between such points as may be decided upon by the proper officers of the Company, for transporting freight and express and passengers. The laws of Florida do not appear to define an express company for the purpose of taxation.

Section 1145, Compiled General Laws, requires any express company doing business in this State to annually on the first day of October

LICENSE TAXES

make a report to the Comptroller of the total amount of gross receipts derived from business done between points in this State, and pay to the Comptroller a sum equal to 2% upon the total amount of gross receipts of such company.

If the transportation company operating boats on the St. Johns River between Jacksonville and Sanford is engaged in the business of carrying express, as its charter purports, I am of the opinion that the company should, under the provisions of Section 1151, Compiled General Laws, report to the State Comptroller and pay 2% upon its gross receipts received for carrying express packages between points in this State.

July 20, 1933.

REAL ESTATE DEALERS MAKING OCCASIONAL SALES
REQUIRED TO PAY

Dear Sir:

I have your letter of the 18th inst., enclosing a communication from Mr. _____, reading as follows:

"I am licensed by the Florida Real Estate Commission and my number is 1131. Do not maintain a regular Real Estate Business. Do not bother with renting and collecting rents and on an average put over one or two deals a year. Right now am working on one, where the property has been sold by or should say taken over by the state for taxes. If I am successful in disposing of this property it will mean that the 1931 and 1932 taxes will be paid and some money coming into the State and the property once again put into the Tax Books. The Brevard County Tax Collector claims that I should take out a State and County license, which amounts to between fifteen and twenty dollars and is a lot of money these days. Mr. Poe, General Council for the Florida Real Estate Commission, says in his book called Elementary Laws for Real Estate Operators that when a person occasionally turns a piece of property and does not maintain a general Real Estate Office he is not required to pay the Tax. This opinion is expressed on the last paragraph of page 41 of the book. Whatever business I do, is done from a desk I have in the room at my Hotel. I do a little Real Estate business as well as anything else whereby I can make a dollar honestly.

"You are a broad minded business man and I want you to give this matter your consideration and then let me hear from you."

In reply to your inquiry, I beg to say that in my opinion such real estate dealer is required under the statutes to procure an occupational license therefor. See Section 1050, et seq., Compiled Genral Laws of Florida, 1927.

LICENSE TAXES

July 21, 1933.

TYPEWRITER AGENTS

Dear Sir:

Replying to your letter of July 18th, permit me to say under the provisions of Section 1055, Compiled General Laws, an agent for typewriters is required to pay a license tax of \$10. If the same man is the agent for adding machines also, he is required to pay a license tax of \$10 for that agency, in addition to the \$10 paid as agent for typewriters.

Under paragraph (g) of Section 16 of Chapter 14491, Acts of 1929, any person, firm or corporation, in the business of repairing typewriters and located permanently, where no other license is paid is required to pay a license tax of \$5.

I construe this provision to mean that a typewriting agency paying the agent's license and also repairing typewriters, would not be required to pay the \$5 license required for repairing typewriters where no other license is paid.

Under provisions of paragraph (h) of the same Chapter, any person not permanently located in the business of repairing typewriters is required to pay a license tax of \$10 in each county.

July 13, 1933.

CITIES AND TOWNS REQUIRED TO FILE SCHEDULE OF LICENSE TAXES

Dear Sir:

I have your letter of July 11th asking my opinion as to whether under Chapter 16299, Acts 1933, of the 1933 Legislature, it would "be necessary for the various cities and towns of a county to file with the tax collector the schedule of their license tax under their charter in order for the tax collector to determine what amount of license tax, if any, is due the State and County."

In my opinion, it will be necessary under this law for the county tax collector to determine the license tax levied by each municipality within the county, so that he may pay to the municipality its portion of the taxes collected under this bill. However, the law does not specify the method which shall be pursued by the tax collector in determining the license taxes of a municipality. I see no objection to the method suggested by you.

July 7, 1933.

DANCE HALLS

Dear Sir:

Replying to your letter of June 5th, permit me to say Sub-section (j) of Section 15 of Chapter 14491, Acts of 1929, reads as follows:

LICENSE TAXES

"Each person, firm or corporation conducting a dance hall for profit whether within or without city or town limits shall pay a license tax of \$100."

If a hotel is conducting a public dance hall for profit, the owners thereof should be required to pay the dance hall license. However, where dances are occasionally held by a hotel for its guests it cannot be said that the hotel or the owners or managers thereof are conducting a public dance hall for profit.

Any person or group of persons may conduct dances without a dance hall or amusement license, if the dances are not being held for profit.

July 7, 1933.

FISH DEALERS

Dear Sir:

Replying to your letter of July 6th, permit me to say it is my opinion that House Bill No. 689, Chapter 16072, Acts 1933, should be construed to mean that any natural person holding a fresh or salt water fish dealer's license, whether it be a license to sell at wholesale or retail, shall be entitled thereunder to sell or dispose of fish direct to consumers, provided such fish are sold to consumers only in the county where the fish were caught or acquired by the seller.

The Act is limited to any *natural* person holding a fresh or salt water fish dealer's license. Under this provision, it appears that corporations were intended to be excluded therefrom.

June 29, 1933.

WHEN MEMBERS FORESTRY CAMP REQUIRED TO PAY TO FISH

Dear Sir:

I am in receipt of your letter of the 27th instant, calling my attention to Sections 1 and 20 of Chapter 13644, Laws of Florida, Acts of 1929, and making inquiry if members of a Federal Forestry Camp, all being residents of the State of Florida, may fish without a license in the county where the camp is located.

Section 1 of said Chapter contains the following:

"All citizens of the United States who have lived in Florida for at least six months immediately preceding the making of application for license as required by this Act, shall be deemed residents of Florida."

Section 20 of said Chapter provides that no license shall be required for residents of the State of Florida to take fresh-water fish by certain methods in the county of their legal residence.

LICENSE TAXES

July 21, 1933.

TYPEWRITER AGENTS

Dear Sir:

Replying to your letter of July 18th, permit me to say under the provisions of Section 1055, Compiled General Laws, an agent for typewriters is required to pay a license tax of \$10. If the same man is the agent for adding machines also, he is required to pay a license tax of \$10 for that agency, in addition to the \$10 paid as agent for typewriters.

Under paragraph (g) of Section 16 of Chapter 14491, Acts of 1929, any person, firm or corporation, in the business of repairing typewriters and located permanently, where no other license is paid is required to pay a license tax of \$5.

I construe this provision to mean that a typewriting agency paying the agent's license and also repairing typewriters, would not be required to pay the \$5 license required for repairing typewriters where no other license is paid.

Under provisions of paragraph (h) of the same Chapter, any person not permanently located in the business of repairing typewriters is required to pay a license tax of \$10 in each county.

July 13, 1933.

CITIES AND TOWNS REQUIRED TO FILE SCHEDULE OF LICENSE TAXES

Dear Sir:

I have your letter of July 11th asking my opinion as to whether under Chapter 16299, Acts 1933, of the 1933 Legislature, it would "be necessary for the various cities and towns of a county to file with the tax collector the schedule of their license tax under their charter in order for the tax collector to determine what amount of license tax, if any, is due the State and County."

In my opinion, it will be necessary under this law for the county tax collector to determine the license tax levied by each municipality within the county, so that he may pay to the municipality its portion of the taxes collected under this bill. However, the law does not specify the method which shall be pursued by the tax collector in determining the license taxes of a municipality. I see no objection to the method suggested by you.

July 7, 1933.

DANCE HALLS

Dear Sir:

Replying to your letter of June 5th, permit me to say Sub-section (j) of Section 15 of Chapter 14491, Acts of 1929, reads as follows:

LICENSE TAXES

"Each person, firm or corporation conducting a dance hall for profit whether within or without city or town limits shall pay a license tax of \$100."

If a hotel is conducting a public dance hall for profit, the owners thereof should be required to pay the dance hall license. However, where dances are occasionally held by a hotel for its guests it cannot be said that the hotel or the owners or managers thereof are conducting a public dance hall for profit.

Any person or group of persons may conduct dances without a dance hall or amusement license, if the dances are not being held for profit.

July 7, 1933.

FISH DEALERS

Dear Sir:

Replying to your letter of July 6th, permit me to say it is my opinion that House Bill No. 689, Chapter 16072, Acts 1933, should be construed to mean that any natural person holding a fresh or salt water fish dealer's license, whether it be a license to sell at wholesale or retail, shall be entitled thereunder to sell or dispose of fish direct to consumers, provided such fish are sold to consumers only in the county where the fish were caught or acquired by the seller.

The Act is limited to any *natural* person holding a fresh or salt water fish dealer's license. Under this provision, it appears that corporations were intended to be excluded therefrom.

June 29, 1933.

WHEN MEMBERS FORESTRY CAMP REQUIRED TO PAY TO FISH

Dear Sir:

I am in receipt of your letter of the 27th instant, calling my attention to Sections 1 and 20 of Chapter 13644, Laws of Florida, Acts of 1929, and making inquiry if members of a Federal Forestry Camp, all being residents of the State of Florida, may fish without a license in the county where the camp is located.

Section 1 of said Chapter contains the following:

"All citizens of the United States who have lived in Florida for at least six months immediately preceding the making of application for license as required by this Act, shall be deemed residents of Florida."

Section 20 of said Chapter provides that no license shall be required for residents of the State of Florida to take fresh-water fish by certain methods in the county of their legal residence.

LICENSE TAXES

The question presented is whether members of such forestry camp are residents of the county in which such camp is located. In reply I beg to say that in my opinion the members of such camp would not be legal residents of the county in which such camps are located, unless they already had their legal residence in such county, or unless it is the purpose of such members to make such county their permanent abode.

June 27, 1933.

TRAINED NURSE

Dear Sir:

Replying to your letter of June 20th, permit me to say Sub-section (i) of Section 14 of Chapter 14491, Acts of 1929, contains the following provision:

"Each trained nurse holding a certificate as such shall pay a license tax of \$10."

I fail to find any provision of law exempting a nurse from the payment of this occupational license tax, because she is employed in a hospital.

June 26, 1933.

VENDING MACHINES

Dear Sir:

Replying to yours of June 19th, permit me to say Section 5 of Chapter 14491, Acts of 1929, requires any person, firm or corporation, who operates or places for public use vending machines, to pay one State License tax and one county license tax in the county where the principal place of business is located, and in addition thereto a separate county license tax is collectible in each additional county where the machines are placed or used.

The State tax is fifteen dollars and the county tax is seven dollars and fifty cents.

This office has held that the license tax required is to cover the occupation of a person, firm or corporation operating or placing vending machines, and that the tax is against the person, firm or corporation and is not applicable to each machine.

June 23, 1933.

RADIO DEALERS

Dear Sir:

All dealers in radios are required to pay the license required by paragraph E of Section 17 of Chapter 14491, Acts of 1929, regardless of whether or not such dealers pay a merchant's license or other occupational license tax.

LICENSE TAXES

June 21, 1933.

INSURANCE COMPANIES LIABLE FOR 2% OF GROSS AMOUNT OF
PREMIUMS RECEIVED FROM POLICY HOLDERS IN FLORIDA
LESS CERTAIN DEDUCTIONS*Dear Sir:*

Replying to your letter of June 19, I beg to advise that my construction of Section 1182 of the Compiled General Laws of 1927, is that insurance companies, in addition to the annual license tax therein imposed, is subject to and liable for 2% of the gross amount of receipts of premiums of policy holders in Florida less return premiums and premiums for reinsurance in companies authorized to transact business in Florida.

Necessarily, this tax cannot be paid at the beginning of the fiscal year, as most license taxes are paid, but by the very nature of things it cannot be paid until the premiums are received, as there would be no way of knowing the amount of such tax. The Bankers National Life Insurance Company, Jersey City, New Jersey, is liable for the 2% gross tax on all premiums received by it from policy holders in the State which has not already been paid. There is no other reasonable construction to be placed on this Act.

June 19, 1933.

OPTICIAN

Dear Sir:

Replying to your letter of June 16th, permit me to say an optician is one who makes or deals in optical glasses and instruments. An optometrist is one who is skilled in or practices optometry.

Under the provisions of Section 1213, Compiled General Laws, if a doctor or any other person is doing the business of an optician, he should be required to pay the license provided for in said Section.

The fact that a merchant is paying a merchant's license does not relieve him of the necessity of paying the license tax provided for by Section 1213, if he is doing business as an optician.

June 19, 1933.

HIDE AND FUR DEALERS

Dear Sir:

Replying to your letter of June 14th, permit me to say that dealers in hides and furs are required to pay an occupational license tax as provided by paragraph (c) of Section 12 of Chapter 14491.

LICENSE TAXES

This is an occupational license tax levied for general revenue purposes on those persons, firms and corporations who operate in cities and towns. The license tax imposed by Section 61 of Chapter 13644, Acts of 1929, is a regulation charge rather than a revenue measure, and applies to all dealers or buyers of alligator skins or green or dried fur, regardless of whether they do business in town or out.

The practical operation of the law is that dealers who fall under Section 61, Chapter 13644, and also under the provisions of Chapter 14491, will have to pay both licenses.

June 20, 1933.

BROKERS IN STOCKS AND BONDS

Dear Sir:

Replying to your letter of June 16th, in which you ask to be advised whether a broker dealing in stocks and bonds is required, in addition to payment of the registration fee to the Florida Securities Commission, to procure an occupational license under Section 1088, Compiled General Laws, permit me to say such person should be required to have an occupational license under said Section.

The \$25 fee paid to the Florida Securities Commission is not an occupational license tax.

June 15, 1933.

HOTEL COMMISSION REQUIRED TO COLLECT

Dear Sir:

Replying to your letter of June 14th, permit me to say under the provisions of Section 6 of House Bill No. 586, Acts of 1933, it appears that you would be authorized to require a license from every house, boat, vehicle, or other structure, or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters, sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

It appears to me under the provisions of this Section that owners of cottages and houses located on the various beaches of this State, which are offered for rent to transient or permanent guests or tenants, may be required to procure a license from your Department, and such cottages and houses subjected to inspection by yourself or your deputies.

LICENSE TAXES

June 15, 1933.

MANUFACTURER FRUIT JUICES REQUIRED TO PAY \$250

Dear Sir:

Replying to your letter of June 13, permit me to say under the provisions of Sub-section (a) of Section 5 of Senate Bill 427, Chapter 15884, Acts 1933, manufacturers engaged exclusively in the production and processing of fruit juices containing more than one-half of one percent. of alcohol are required to pay a license tax of \$250 per annum, and under the provisions of Sub-section (b) of Section 5, such manufacturers are required to file a surety bond in the sum of \$1000.

We construe this section to mean that where a manufacturer is producing and processing fruit juices, and does not purport to be engaged in the manufacture of wine, beer, porter or ale, but is engaged exclusively in the production and processing of fruit juices such as syrups, flavors and extracts, and foods such as jellies, jams, etc., such manufacturer should not be required to pay the higher tax of \$750 per annum which is applicable to manufacturers of malt or vinous beverages commonly known as beer, porter, ale and wine.

If a manufacturer is producing and processing fruit juices for sale as wine for beverage purposes, such manufacturer should be required to pay the higher tax of \$750 per annum.

May 20, 1933.

BAKERIES REQUIRED TO PAY ON EACH PLACE OF BUSINESS

Dear Sir:

Section 1050 of the Compiled General Laws of Florida 1927, provides that no person, firm or corporation shall engage in or manage any business, profession or occupation, unless a State license or a State and county license, or a county license, as the case may be, shall have been procured from the tax collector of the county where the place of business may be located, etc.

Section 1054 provides that only one State license tax shall be required in any case, unless otherwise provided. The license tax is imposed for the privilege of engaging in the particular business. For instance, the Seybold Baking Company pays only one State license tax for the privilege of operating one particular bakery, and this is required to be paid in the county where the particular bakery is operated. Should that particular bakery be removed to and operated in a different county during the same license tax year, no further State license tax would be required.

The State license tax entitles the company to operate only the particular bakery for which the license is issued. This does not authorize the company to operate other or additional bakeries under the same

LICENSE TAXES

"In cities and towns of 10,000 inhabitants or more, \$50.00; in cities and towns of less than 10,000 and more than 5,000 inhabitants, \$35.00; in cities and towns of 5,000 inhabitants or less, \$15.00."

The same section provides that undertakers and embalmers, which means an undertaker who is also an embalmer, shall pay a license tax as follows:

"In cities and towns of 10,000 inhabitants or more, \$100; in cities and towns of less than 10,000 and more than 5,000 inhabitants, \$75.00; in cities and towns of 5,000 inhabitants or less, \$25.00."

Under the provisions of Subdivision (L), Section 15 of Chapter 14491, every person in the State of Florida, who is licensed under the provisions of Chapter 10120, Acts of 1925, by the State Board of Embalming, and practicing as an embalmer, charging for their services as such and the validity of whose right to practice depends upon their having been duly licensed under the provisions of Chapter 10120, Acts of 1925, are required to pay \$10, when they are employed by licensed undertakers and/or embalmers.

It is my view that a person who has procured the license required under Section 1262 to conduct the business of an undertaker and embalmer is not required to pay the \$10 license, unless the holder of the license himself does embalming work, and his right to do so is dependent upon his having been licensed under the provisions of Chapter 10120, Acts of 1925.

March 9, 1933.

FURNITURE DEALERS MUST HAVE STATE LICENSE FOR EACH
STORE OPERATED

Dear Sir:

Section 1149, Compiled General Laws of Florida 1927, imposes a license tax upon furniture dealers measured by the capital employed in the business.

While Section 1054, Compiled General Laws, provides that only one state license tax shall be required in any case, unless otherwise provided in the Chapter of which Section 1054 was a part, this does not mean that a furniture dealer having procured a state license tax for the operation of one furniture store, the amount of the tax being determined by the value of the stock carried, could open up and operate an additional store under the same license, any more than he could increase the stock of goods carried in the first store without correspondingly increasing the license tax.

The statute seems to contemplate, and the Legislature evidently in-

LICENSE TAXES

tended, that each store operated must have a state license tax based on the value of the stock carried in that store.

I am returning files attached to your letter, as requested.

February 28, 1933.

RACING COMMISSION NOT AUTHORIZED TO ISSUE LICENSES

Dear Sir:

This is in reply to your letter of February 24th, in which you ask to be advised if the various "concessions" at dog race tracks are licensed by the State Racing Commission or by the tax collector.

I do not know exactly what you mean by concessions. However, Section 9-B of Chapter 14832, Laws of Florida, Acts of 1931, which is the Race Track Law, provides that:

"All persons connected with race tracks, including the gate keeper, announcers, ushers, starters, officials, jockeys, drivers, trainers, handlers, owners, stablemen, clockers, assistants, sellers of racing forms or bulletins, attendants in connection with the wagering machines, managers of tracks, apprentices or other persons connected in any way or manner with the operation of any race track, shall pay an occupational tax of \$10 annually to and be licensed by the Commission."

You will note that the Section quoted requires that *persons connected in any manner with the operation of any race track* shall pay an occupational tax to and be licensed by the Commission. I do not think that the operator of a lunch stand, a peanut vendor, and the like, could be held to be connected in any way with the operation of a race track, and it is probable that such persons should procure a license from your office. However, I think you should ascertain if such persons have been licensed by the Racing Commission, before you require a license.

I do not think the statute authorized the Racing Commission to license vendors of merchandise, operators of lunch stands, etc., but it may be that they have been doing so. If so, the practice should be discontinued, and such persons should be required to procure the regular State and County license from the tax collector.

February 27, 1933.

WAR VETERANS NOT EXEMPT FROM PAYMENT OF INSURANCE
QUALIFICATION TAX OR FEE

Dear Sir:

Chapter 12110, Acts of 1927, as amended by Chapter 13876, Acts of 1929, exempts disabled war veterans from the payment of occupational license taxes.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
LICENSE TAXES

"In cities and towns of 10,000 inhabitants or more, \$50.00; in cities and towns of less than 10,000 and more than 5,000 inhabitants, \$35.00; in cities and towns of 5,000 inhabitants or less, \$15.00."

The same section provides that undertakers and embalmers, which means an undertaker who is also an embalmer, shall pay a license tax as follows:

"In cities and towns of 10,000 inhabitants or more, \$100; in cities and towns of less than 10,000 and more than 5,000 inhabitants, \$75.00; in cities and towns of 5,000 inhabitants or less, \$25.00."

Under the provisions of Subdivision (L), Section 15 of Chapter 14491, every person in the State of Florida, who is licensed under the provisions of Chapter 10120, Acts of 1925, by the State Board of Embalming, and practicing as an embalmer, charging for their services as such and the validity of whose right to practice depends upon their having been duly licensed under the provisions of Chapter 10120, Acts of 1925, are required to pay \$10, when they are employed by licensed undertakers and/or embalmers.

It is my view that a person who has procured the license required under Section 1262 to conduct the business of an undertaker and embalmer is not required to pay the \$10 license, unless the holder of the license himself does embalming work, and his right to do so is dependent upon his having been licensed under the provisions of Chapter 10120, Acts of 1925.

March 9, 1933.

FURNITURE DEALERS MUST HAVE STATE LICENSE FOR EACH
STORE OPERATED

Dear Sir:

Section 1149, Compiled General Laws of Florida 1927, imposes a license tax upon furniture dealers measured by the capital employed in the business.

While Section 1054, Compiled General Laws, provides that only one state license tax shall be required in any case, unless otherwise provided in the Chapter of which Section 1054 was a part, this does not mean that a furniture dealer having procured a state license tax for the operation of one furniture store, the amount of the tax being determined by the value of the stock carried, could open up and operate an additional store under the same license, any more than he could increase the stock of goods carried in the first store without correspondingly increasing the license tax.

The statute seems to contemplate, and the Legislature evidently in-

LICENSE TAXES

tended, that each store operated must have a state license tax based on the value of the stock carried in that store.

I am returning files attached to your letter, as requested.

February 28, 1933.

RACING COMMISSION NOT AUTHORIZED TO ISSUE LICENSES

Dear Sir:

This is in reply to your letter of February 24th, in which you ask to be advised if the various "concessions" at dog race tracks are licensed by the State Racing Commission or by the tax collector.

I do not know exactly what you mean by concessions. However, Section 9-B of Chapter 14832, Laws of Florida, Acts of 1931, which is the Race Track Law, provides that:

"All persons connected with race tracks, including the gate keeper, announcers, ushers, starters, officials, jockeys, drivers, trainers, handlers, owners, stablemen, clockers, assistants, sellers of racing forms or bulletins, attendants in connection with the wagering machines, managers of tracks, apprentices or other persons connected in any way or manner with the operation of any race track, shall pay an occupational tax of \$10 annually to and be licensed by the Commission."

You will note that the Section quoted requires that *persons connected in any manner with the operation of any race track* shall pay an occupational tax to and be licensed by the Commission. I do not think that the operator of a lunch stand, a peanut vendor, and the like, could be held to be connected in any way with the operation of a race track, and it is probable that such persons should procure a license from your office. However, I think you should ascertain if such persons have been licensed by the Racing Commission, before you require a license.

I do not think the statute authorized the Racing Commission to license vendors of merchandise, operators of lunch stands, etc., but it may be that they have been doing so. If so, the practice should be discontinued, and such persons should be required to procure the regular State and County license from the tax collector.

February 27, 1933.

WAR VETERANS NOT EXEMPT FROM PAYMENT OF INSURANCE
QUALIFICATION TAX OR FEE

Dear Sir:

Chapter 12110, Acts of 1927, as amended by Chapter 13876, Acts of 1929, exempts disabled war veterans from the payment of occupational license taxes.

LICENSE TAXES

Section 2 of Chapter 14741, Acts of 1931, which amended Section 2 of Chapter 13663, Acts of 1929, requires insurance agents and solicitors to pay a qualification tax of \$6. This is in the nature of a fee, the proceeds of which must be used exclusively for the carrying out and enforcement of the provisions of said Act.

It is my opinion therefore, that all agents and solicitors must pay this qualification tax or fee, regardless of whether they are disabled war veterans or others.

February 22, 1933.

FISH DEALERS NOT REQUIRED TO PAY LICENSE ON
RECEIVING DEPOTS

Dear Sir:

This refers to yours of February 20, in which you request my opinion as to license required of a wholesale fish dealer operating one wholesale house from which his sales are made and maintaining receiving depots at different locations on the coast where fish are received and transported.

It is my opinion that when a wholesale fish dealer has procured the license required by Section 1827, Compiled General Laws, he should not be required to have a separate license for his receiving depots.

February 16, 1933.

CARNIVALS—AMUSEMENT PARKS

Dear Sir:

Yours under date of the 9th instant, addressed to Major Fred H. Davis, has been referred to this office for reply.

You state that the American Legion at St. Augustine purposes to hold a carnival to raise money to pay the tuition of children in the town, whose parents cannot afford to send them to school, and that you expect to have a man from Jacksonville bring over a merry-go-round, ferris wheel, etc., for the operation of which you wish to be advised if a license is required, permit me to say:

Under date of December 24, 1928, Mr. Justice Davis, who was then Attorney General, rendered an opinion covering the subject of your inquiry, in which he stated that where a fraternal or charitable organization operates a permanently located amusement park, in which are merry-go-rounds, roller-coasters, theatrical and other exhibitions, shows, etc., it is permissible for them to pay a state license tax of \$100 for the privilege of operating such devices as may be permanently in such park.

However, he stated that the amusement park must be permanently located, and some form of diversion or amusement must be permanently carried on in such park.

LICENSE TAXES

In the same opinion it was held that shows under tents or temporary structures of any kind are not within the purview of any specific exemption, even when they are given under the auspices of charitable or fraternal organizations. And in all such cases the tax provided for by Section 1244 is applicable and should be collected, unless the fraternal or charitable organization in question has taken out a license for operating an amusement park under Section 1080, Compiled General Laws of 1927.

February 6, 1933.

DISABLED PERSONS PEDDLING MEDICINE ARE EXEMPT

Dear Sir:

Honorable R. A. Green, Member of Congress, has requested me to advise you the law of this State relative to a disabled person peddling medicine.

Permit me to say Chapter 15040, Laws of Florida, Acts of 1931, reads as follows:

"All confirmed cripples or invalids, physically incapable of manual labor, who have been residents of the State of Florida for a period of at least one year, or all Confederate Veterans of the Civil or Veterans of the World War or Spanish-American War falling within any exemption otherwise provided by law, and widows who are dependent upon their own exertions, shall be allowed to peddle without paying a license, using their own capital only; Provided, such exemption shall be allowed only upon the certificate of the county or other reputable physician of the disability herein named; Provided, this exemption shall not apply to the sale of spiritous, vinous, or malt liquors, lighting rods, and cigarettes."

February 1, 1934.

FURS AND SKINS—DEALERS REQUIRED TO PAY LICENSE TAX

Dear Sir:

Replying to your favor of January 27th., I beg to advise that Section 61 of Chapter 13644, Acts of 1929, Laws of Florida, reads in part as follows:

"It shall be unlawful for any person to engage in the business of a dealer or buyer in alligator skins or green or dried furs in the State of Florida or purchase such skins within the State until such person has been licensed as herein provided."

The Fourth paragraph of Section 61 reads as follows:

LICENSE TAXES

"A non-resident dealer or buyer shall be required to pay a license fee of \$500.00 per annum, and shall pay a license fee \$100.00 per annum for each agent, resident buyer or traveling buyer employed by or buying for or acting as agent for such non-resident buyer."

In view of the provisions of the statute, it is my opinion that if a person from another State comes to the State of Florida and engages in the business of buying alligator skins or green or dried furs that he should be classed as a non-resident buyer, and should be required to pay a license fee of \$500.00 per annum until he had remained in this State a sufficient time that he might be classed as a resident dealer or buyer.

The statute does not appear to make an exception of buyers who deal exclusively with established fur dealers in this State.

April 23, 1934.

WHEN LICENSE TAX NOT REQUIRED IN FRESH WATER

Dear Sir:

Replying to your favor of April 23rd., I beg to advise that Section 20 of Chapter 13644, Acts of 1929, contains the following provision:

"No license shall be required for residents of the State of Florida to take by hook and line, rod and reel, bob, spinner or troll, fresh water fish in the county of their legal residence, and/or in all lakes and rivers and streams forming the boundary line or lines of counties, except as it applies to the boundary line or lines of Alachua County."

I construe the provision quoted above to mean that a legal resident can fish in lakes, rivers and streams where the county of his legal residence adjoins the waters in which he is fishing. For illustration. Suppose both Leon and Gadsden Counties were each bounded by the Ocklocknee River for a distance of ten miles, then those having legal residence in either of the counties could fish in the river for ten miles and no more.

August 3, 1934.

CRABS—FISH DEALERS LICENSE REQUIRED

Dear Sir:

Answering your letter of the 31st ult., I beg to say it is my opinion that persons selling crabs should take out a salt water fish dealer's license.

LICENSE TAXES

June 7, 1933.

NO LICENSE TAX REQUIRED TO MANUFACTURE BEVERAGES
CONTAINING NOT MORE THAN 3.2% ALCOHOL
FOR PERSONAL USE*Dear Sir:*

Replying to your favor of June 3rd., permit me to say that I find no legal objection to a person making beverages containing not more than 3.2% alcohol for his own personal use, however, if such person offers the same for sale or exchange or in any wise deals in the same as a business for profit, such person would be required to have a manufacturer's license.

July 6, 1933.

STEAMSHIP COMPANIES REQUIRED TO HAVE LICENSE FOR EACH
BOAT SELLING BEVERAGES*Dear Sir:*

Replying to your letter of June 5th, permit me to say I am of the opinion that steamship companies should be required under the provisions of Senate Bill 427, Chapter 15884, Acts of 1933, known as the Beer Act, to have a vendor's license for each boat selling beverages under the laws of Florida, because Section 4 of the Act reads as follows:

"Vendors selling the beverages herein referred to on boats or dining cars shall be required to take out only one state and county license for each boat or dining car, which license shall be taken out in the county where the principal place of business of each such vendor is located. When the principal place of business of such vendor is not located in this State, such license shall be taken out in the county in which such vendor first engages in the business of selling such beverages in this State. . . . Licenses issued to such vendors shall only authorize the sale of such beverages to their passengers anywhere along their lines of travel."

You state that the steamship companies referred to in your letter have agreed that no beer will be sold on their boats until after they have passed beyond the State. I do not think, as a matter of practical application, that the statute could be construed to exempt steamship companies because the officers of the company agree that no beer will be sold in the State of Florida.

I am of the opinion that the law should be construed to mean that when a vendor has received beverages from a manufacturer or distributor in this State, for the purpose of resale, such vendor has then engaged in the business of selling such beverages, and should be required to have a vendor's license.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
LICENSE TAXES

June 23, 1933.

CITY OR TOWN AUTHORIZED TO IMPOSE LICENSE TAX ON
MANUFACTURERS AND DISTRIBUTORS OF BEER, ETC., ONLY
WHEN PLACE OF BUSINESS IS MAINTAINED THEREIN

Dear Sir:

Replying to yours of June 19, permit me to say Senate Bill No. 427, Chapter 15884, Acts 1933, authorizes cities and towns to impose a tax upon distributors of beer and other beverages, where the distributor has a place of business in the city or town, in the amount of fifty per cent of the State tax.

Section 18 of the act contains the following provision: "No tax on the manufacture, distribution, transportation, importation or sale of such beverages, shall be imposed by way of license, excise or otherwise, by any municipality, anything in any municipal charter, special or general law to the contrary notwithstanding, except as herein expressly authorized."

In view of the Section quoted above, it is my opinion that a city or town does not have the authority to impose an occupational license tax on a manufacturer or distributor of beverages, under said act, unless the manufacturer or distributor maintains a place of business in said city or town.

June 19, 1933.

BEER—LICENSE TAX REQUIRED OF MANUFACTURER AND
DISTRIBUTOR

Dear Sir:

Replying to your letter of June 15th, permit me to say under the provisions of Section 17 of Senate Bill 427, Chapter 15884, Acts 1933, known as the "Beer Bill," manufacturers and distributors are required to pay a tax of 6¢ per gallon on beverages sold in bulk, in barrels or kegs, and when sold in containers of less than one gallon the tax to be paid is $\frac{3}{4}$ ¢ on each pint or fraction thereof.

Therefore, if a manufacturer or distributor sells beer in a container of less than one gallon, the tax should be paid at the rate of $\frac{3}{4}$ ¢ on each pint, and if the individual container holds less than a pint, the tax to be paid is $\frac{3}{4}$ ¢ on each bottle or other container in which the beer is sold.

May 17, 1933.

BEVERAGES, MALT AND VINOUS—TAX COLLECTORS ENTITLED
TO FEES FOR COLLECTING TAXES

Dear Sir:

The fees referred to in Section 4 of Senate Bill No. 427, Chap. 15884, Acts of 1933, are in fact license taxes, and the tax collector is entitled

LICENSE TAXES

to commission for collecting same at the same rate as provided by law for the collection of other State and County taxes; and in my opinion his commission should be paid, not only in like manner, but from the same fund from which his commission is paid by the State for collecting other State taxes.

May 29, 1933.

LIABILITY OF SALES REPRESENTATIVE OR BROKER TO LICENSE
TAX UNDER PROVISIONS OF S. B. 427, COMMONLY
KNOWN AS BEER BILL

Dear Sir:

Replying to your favor of May 25th, permit me to say, the Provisions of Senate Bill No. 427, Chapter 15884, Acts 1933, legalizing and licensing the sale of Beer containing 3.2% alcohol, are quite clear and definite. The law provides for license for manufacturers or distributors and vendors. A distributor is a person, firm or corporation selling to and delivering to vendors. If you do not intend to do anything more than take orders for beverages, and do not intend to carry any stock or make deliveries, you, of course, would not be a distributor.

May 29, 1933.

WAREHOUSING BEER FOR DULY LICENSED WHOLESALERS OR
DISTRIBUTORS

Dear Sir:

Replying to your favor of May 24th, permit me to say as a warehouseman, if you do not deal in beverages under the provisions of Senate Bill No. 427, Chapter 15884, Acts 1933, either as a manufacturer or vendor, you may store beverages for your customers just the same as you can store other commodities, however, if beer and other beverages are consigned to you and you distribute them, it will probably be necessary for you to have a distributors license.

January 10, 1934.

EXEMPTION OF CARNIVALS AND OTHER BUSINESSES FROM
LICENSE TAXES WHEN OPERATING UNDER CONTRACT
WITH FAIR ASSOCIATION

Dear Sir:

I have your letter of January 5th, in which you request my opinion upon the following questions:

FIRST

If a carnival company contracts with a Fair Association organized under Chapter 7388, Laws of Florida, Acts of 1917, being Sections 6516

LICENSE TAXES

through 6526, Compiled General Laws of Florida, 1927, to operate its carnival for the duration of the Fair or Exhibition held by the Fair Association, or for a shorter period of time, and under the contract the Association is to receive a minimum guaranteed sum or a percentage of gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, would the carnival be exempt from obtaining license taxes required under the laws of Florida?

Hon. Fred H. Davis, (now Chief Justice of the Supreme Court of Florida), my predecessor in office, wrote an exhaustive opinion on January 29, 1931, upon the subject of your first question. I quote the following from that opinion and adopt the quoted part as my own opinion:

"Section 6522 of the Compiled General Laws provides that all moneys and property of Fair Associations incorporated under the provisions of Section 6516, et seq., Compiled General Laws, shall be so long as used for the purpose of the Fair Association exempt from *all forms* of taxation.

"A contract made by a Fair Association with a carnival company in consideration of which the carnival company produces certain shows and exhibitions for the fair association for a certain consideration would be 'property' within the meaning of Section 6522. Also the money taken in by such fair association pursuant to such contract would be money which under the terms of Section 6522 is expressly exempt from *all forms* of taxation. I am, therefore, of the opinion that where a carnival company contracts with a fair association incorporated under Section 6516, et seq. to operate its carnival for a period of two weeks within an amusement park owned or controlled by the fair association, the association to receive a minimum guaranteed sum or a percentage of the gross receipts taken in by the various shows or exhibitions of the carnival as a part of the contract price, that such carnival would be deemed a mere agent of the fair association for the purpose of putting on the shows mentioned in the contract and would not be subject to the license tax provided by Section 1080 of the Compiled General Laws, or other provisions of the Compiled General Laws relating to taxation of shows. The fair association itself having been granted an express exemption from *all forms* of taxation would likewise not be subject to the tax.

"* * * * *

"The foregoing construction has been placed on the law for a number of years past. It must be borne in mind, however, that the carnival company is liable for all the tax provided for in Section 1244 of the Compiled General Laws with reference to any show, device or amusement which is not specifically covered by the contract with the . . . fair association under such circumstances that the show or device is really being operated for the . . . fair association, subject to its orders and control rather

LICENSE TAXES

than as an independent operation seeking the patronage of the public."

SECOND

If the Fair Association rents space in the Fair buildings and the Fair grounds to persons who will operate various businesses, including restaurants, and sell merchandise of various kinds, will these businesses be exempt from license taxes required of such businesses when operated outside of the Fair grounds?

If the businesses referred to in your second question have contracts with a Fair Association incorporated under Section 6516, et seq., Compiled General Laws of Florida, 1927, to operate for the duration of the Fair or exhibition held by the Fair Association or for a shorter period of time, the businesses in the buildings or grounds owned or controlled by the Fair Association, and the Association is to receive a minimum guaranteed sum or a percentage of the gross receipts taken in by the various businesses as a part of the contract price, then such businesses would be deemed mere agents of the Fair Association for the purposes mentioned in the contract and would not be subject to the license taxes required by the laws of the State of Florida of such businesses when operated without a contract from a Fair Association. The Fair Association itself having been granted an express exemption from all forms of taxation would likewise not be subject to the license taxes.

January 31, 1933.

RACE TRACK: WESTERN UNION TELEGRAPH CO. EMPLOYEES
NOT SUBJECT TO LICENSE TAX

Dear Sir:

I am in receipt of your letter of January 27, enclosing correspondence on the subject of whether licenses are required under Chapter 14832, Acts of 1931, of employees of the Western Union Telegraph Company.

From the correspondence, it appears that such employees are not "connected with race tracks" or "connected in any way or manner with the operation of any race track" under the contemplation of the statute, and, in my opinion, under the showing of the correspondence, such employees are not subject to license under the statute.

May 10, 1933.

WHEN WESTERN UNION TELEGRAPH CO. OPERATING
WITHIN RACING PLANT LIABLE

Dear Sir: ▲

This refers to your favor of May 9th., with reference to whether or not employees of the Western Union Telegraph Company working within

LICENSE TAXES

the enclosure of the Miami Jockey Club's racing plant should pay the occupational license tax.

I have carefully reviewed this file, and I think that our opinion rendered to Mr. Mabry under date of January 31st., 1933, a copy of which was sent to you under date of April 22nd., did not cover all of the facts as I now find them as I review the file carefully. I did not understand that the Western Union Telegraph Company actually established a branch office at the track. If they actually establish a branch office within the enclosure of the Miami Jockey Club's racing plant, it is my opinion that they must pay this occupational license tax, just the same as the employees of Mr. Stefanos and others who actually have concessions and form a part of the general racing operations. On the other hand, if the telegraph company's operation is limited to the delivery of messages by the boys to and from people at the track, then I do not think they should be required to pay the occupational license tax.

December 12, 1933.

APPLICATION OF LAW IN RE SHOWS OR ENTERTAINMENTS

Dear Sir:

This is in response to your communication of December 11th, in which you ask for my opinion as to whether or not a license tax should be collected from Collins Management Services.

I understand from your communication and enclosures that this organization enters into a contract with some local group, and charges a specified amount for the entertainment, the sponsor of the show making all arrangements for the building, lights, stage, etc. From the folder enclosed I note that the type of entertainment consists of a series of four performances, including a musical and dancing trio, an impersonator, a three-act comedy, and a lecture by an Economist. The specific question is whether or not this type of entertainment comes within the purview of Section 1245, Compiled General Laws of 1927.

This Section levies a license tax upon "theatrical shows, or travelling players and minstrels, in buildings fitted up for such shows or exhibitions," the tax being payable for each performance, and the amount being based upon the population of the city or town in which the performance is given.

It is my opinion that with the exception of the educational lecture, the type of entertainment involved comes within the purview of this statute, and the license tax is accordingly applicable.

I wish, however, to call your specific attention to the proviso which reads as follows:

"Provided, further, that this Section shall not apply to any hall owned or used by any charitable or fraternal organization, giving performances or exhibitions for their own benefit."

LICENSE TAXES

If the sponsor of this entertainment is a charitable or fraternal organization, and the entertainment is given in a hall owned or used by such organization, and the performance is given for the benefit of such charitable or fraternal organization, then the proviso is effective and the license tax does not apply.

It is for the tax collector to determine whether or not the facts necessary to invoke the proviso exist.

November 27, 1933

MILK LAW—RE: APPLICATION FREE LICENSE

Dear Sir:

Replying to yours of November 23rd, with which you enclose letter from the Honorable John M. Scott, Chief Milk Inspector, and ask to be advised if persons engaged in the dairy business may be issued a free license under the provisions of Chapter 14762, Acts of 1931, permit me to say paragraph 4 of Section 9 of Chapter 16078, Acts of 1933, contains the following language:

"No payment of fees provided for in the Milk Products Law of the 1931 Legislature of the State of Florida shall be required while this Act is in full force and effect, but are hereby expressly suspended for such period of time."

You will observe that the Act of 1933 expressly suspends the payment of *fees* required by the Act of 1931, but makes no reference to the license which the Act of 1931 required dairymen and milk dealers to procure. It is my opinion, therefore, that if in the practical administration of the Department, the issuance of a license as required under the 1931 Act would make the provisions of the law more easily enforceable, a free license could be issued under the provisions of the 1931 Act. However, neither the amount of the license nor any fee for the issuance thereof can be legally charged.

September 7, 1933

ICE MANUFACTURER MAINTAINING RETAIL DEPOTS
REQUIRED TO PAY

Dear Sir:

Replying to yours of August 18th, with which you enclose letter from Tax Collector of Marion County, in which he asks to be advised whether under the provisions of Section 1178, C. G. L. of 1927, a manufacturer of ice, maintaining retail depots in various towns in an adjoining county, should be required to pay the tax provided for by the said Section on such retail depots, permit me to say it is my opinion that such manufacturer should pay the tax, based upon the capacity of each retail depot from which ice is sold.

LICENSE TAXES

September 6, 1933

PEDDLERS OF MERCHANDISE

Dear Sir:

This refers to yours of September 1st, inclosing letter from Mr. _____ in which you ask to be advised whether or not a state and county license should be required, where a person offers for sale direct to the consumer a certain toy designed for "miniature base ball game."

Where the person offering the toy for sale does not have a retail place of business and has not paid a retailer's license, permit me to say Section 1222 of the Compiled General Laws provides that the peddlers of merchandise, not otherwise enumerated specifically in the license laws, shall pay a license tax of One Hundred and Fifty Dollars (\$150.00) in each county.

August 3, 1934

AUCTIONEERS' LICENSE REQUIRED WHEN PERSON EMPLOYED
IN BUSINESS OF PUBLIC AUCTIONEER*Dear Sir:*

I am in receipt of your letter of the 30th ultimo, making inquiry whether a legally licensed merchant will be permitted to hold an auction sale without securing an Auctioneer's License under Section 1078, Compiled General Laws of Florida, 1927.

In reply I beg to say that in my opinion if a legally licensed merchant is selling only his own goods, he would not be required to take out an Auctioneer's License, but if he undertakes to sell goods for other people or engage in the occupation or profession of an Auctioneer for the public, he should have an Auctioneer's License.

August 6, 1934

PERSON ON F. E. R. A. AND RENDERING BARBERING SERVICE TO
CLIENTS OF TRANSIENT BUREAU EXEMPT FROM LICENSE
REQUIREMENTS UNDER CHAPTER 14650, ACTS 1931*Dear Sir:*

I am in receipt of your letter of the 3rd instant, relative to Chapter 14650, The Barbering Act of 1931, the first three paragraphs of which read as follows:

"The question has been raised as to whether or not certain persons who are being taken care of by the Federal Emergency Relief Administration on work relief and who render barber services (hair cuts and shaves) to clients of the Transient Bureau at their camp near this city are subject to the license tax as

LICENSE TAXES

provided in the Barber Act enacted by the Legislature at its 1931 session.

"These men are registered with the Federal Emergency Relief Administration for work relief and have been assigned to serve only the relief clients of the Transient Bureau. No charge is made to the individuals, but persons rendering the services as aforesaid receive a small fixed allowance in cash and a few commodities each week in the same manner as other work relief clients.

"The Act provides, among other things, that 'persons employed in State or local institutions, or hospitals as barbers' shall not be required to pay the license tax and I am wondering if the persons hereinabove mentioned come within the category of these exemptions either expressly or impliedly."

In addition to the exemption, under the provisions of Section 4 of said Act mentioned in the last above quoted paragraph of your letter, I refer you to Section 2 of the said Act in which the words "for the public generally" appear in the statutory definition of the word "barbering." The services mentioned in your letter are not to the public generally.

In consideration of the above, I beg to say in my opinion persons who are being taken care of by the Federal Emergency Relief Administration and who render barber services (hair cuts and shaves) to clients of the Transient Bureau at their camp near that City, as outlined in your letter above quoted, are not subject to the license tax under the Barber Act, Chapter 14650 of 1931.

SECTION 2

DOCUMENTARY STAMP TAX

November 27, 1934.

APPLICABILITY OF DOCUMENTARY STAMP TAX TO "UNIFORM
CROP AGREEMENT" USED BY FLORIDA CITRUS EXCHANGE
AND AFFILIANTS*Dear Sir:*

I have your letter of November 22nd, in which you request me to advise you as to whether or not, in my opinion, the "Uniform Crop Agreement" used by the Florida Citrus Exchange and affiliates, a copy of which is attached to your letter, is subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

In my opinion the "Uniform Crop Agreement" above referred to is subject to the terms and provisions of the Florida Documentary Stamp Tax Act because it contains an obligation for the payment of money. The agreement does not set forth any definite amount of money which is to be paid. It is my opinion that the agreement when properly executed should bear a 10¢ Documentary Stamp.

October 10, 1934.

APPLICATION OF DOCUMENTARY STAMP TAX ACT TO BUILDING
CONTRACT BETWEEN MUNICIPALITY AND BUILDING CON-
TRACTOR WHEREBY CITY AGREES TO PAY A SUM OF MONEY*Dear Sir:*

I have your letter of October 3rd, in which you request my opinion as to whether a building contract, entered into between a municipality and a contractor whereby the contractor agrees to build and the city agrees to pay a sum of money to the contractor at intervals, or upon the fulfillment of the contract by the contractor, is subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

It is my opinion that the above contract is subject to the terms and provisions of Chapter 15787, supra, because it is a written obligation to pay money.

September 22, 1934.

APPLICABILITY OF FLORIDA DOCUMENTARY STAMP TAX ACT
TO PROMISSORY NOTES MADE TO COMMODITY CREDIT
CORPORATION AS PAYEE*Dear Sir:*

I have your letter of September 14th with further reference to the question of whether promissory notes, executed direct to the Commodity

DOCUMENTARY STAMP TAX

Credit Corporation as payee, are subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

I note from the correspondence attached to your letter that Honorable Stanley Reed, General Counsel, Reconstruction Finance Corporation, agrees with your ruling to the effect that notes made to banks or other lending agencies, and purchased by the Commodity Credit Corporation, are subject to the terms and provisions of the Florida Documentary Stamp Tax Act.

Paragraph 4 of Schedule A of Chapter 15787, *supra*, places a documentary stamp tax "on promissory notes, non-negotiable notes, written obligations to pay money . . . made, executed, delivered, sold, transferred or assigned in the State of Florida and for each renewal of the same on each \$100.00 of the indebtedness or obligation evidences thereby 10¢."

Section 4 of the Act makes it a penal offense to make, sign, issue, or accept or cause to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of the tax levied by the Act having been fully paid. It appears that the duty to place the stamp upon a promissory note made, executed, delivered, sold, transferred or assigned in the State of Florida, rests upon the maker and upon the payee.

It is my opinion that the terms of Chapter 15787, *supra*, do not apply to the Commodity Credit Corporation because it is an instrument of the Federal Government. *McCulloch vs. Maryland*, 4 Wheat 316, 4 L. ed. 579; *Owensboro National Bank vs. City of Owensboro*, 173 U. S. 634, 43 L. ed. 850. The fact that the payee of the note may not be subject to the terms and provisions of the Act does not in any way relieve the maker from his legal duty to comply with the terms of the Act by attaching thereto and cancelling the required amount of Florida Documentary Stamps.

It is my opinion that promissory notes executed to the Commodity Credit Corporation as payee are subject to the terms and provisions of Chapter 15787, *supra*, and that it is the duty of the maker thereof to affix thereto and cancel the documentary stamps required by the Act.

July 25, 1934.

DOCUMENTARY STAMP TAX MEASURED BY FACE VALUE OF STOCK CERTIFICATE AND NOT FACE VALUE OF EACH SHARE

Dear Sir:

I have your request for my opinion as to whether the amount of Documentary Stamps required to be used in connection with an original issue of capital stock under Paragraph 2, Schedule A of Chapter 16787, Laws of Florida, Acts of 1931, is measured by the value of each *share* of stock or by the value of each *certificate* of stock.

It will be observed that Paragraph 2 of Schedule A of the Act,

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DOCUMENTARY STAMP TAX

supra, deals with two classes of stock: the first class being stock having a "face value," and the second class being stock "without face value."

From the wording of the Act, it clearly appears that where the stock has a "face value," the tax is measured by the value of each *certificate* of stock and not by the value of each *share* of stock. The clause dealing with stock "without face value" is ambiguous and it does clearly appear whether the Legislature intended to measure the tax by the value of the *share* or by the value of the *certificate*. If this clause is read without reference to the other part of the paragraph, it seems that the tax is 10¢ per *share* unless the actual value is more than \$100 per share, in which event the tax is measured by the value of the *share* rather than the value of the *certificate*.

The question being considered has not been decided by our Supreme Court. In the case of *State ex rel Packard versus Cook*, 146 So. 223, our Court said that much of this statute "appears to have been taken from a similar Federal Act (See 26 U.S.C.A. Section 901) on the same subject, and would therefore take the same construction in the Florida Courts as its prototype has been given in the Federal Courts, insofar as such construction is not inharmonious with the spirit and policy of our own legislation upon the subject * * *."

The question of whether the tax upon stock "without face value" is measured by the value of each *share* of stock or by the value of each *certificate* of stock was before the Federal Court in the case of *Commercial Credit Company versus Tate*, (District Court, D. Maryland 1924) 2 Fed. (2d.) 862, affirmed by the Circuit Court of Appeals, 4th Circuit in 7 Fed. (2d.) 1022. The Court after discussing Paragraph 2 of Schedule A, supra, decided that it was the intention of the Congress that the tax upon stock "without face value" would be measured by the value of the *certificate* without regard to the number of shares included therein.

It will be noted that our statute and the Federal Revenue Act of 1921 (construed in *Commercial Credit Company versus Tate*, supra,) are identical, except as to amount, insofar as they apply to stock with "face value," and they are also identical as to stock "without face value" except that the Federal Act contains a provision, which our Act does not have, providing for a tax of 1¢ on each \$20.00 of actual value, or fraction thereof, where the actual value is less than \$100 per share. In view of the opinion of the Federal Court in the case of *Commercial Credit Company versus Tate*, supra, and the holding of our Supreme Court in the case of *State ex rel Packard*, supra, that our Documentary Stamp Tax Act should take the same construction in the Florida Courts as its prototype has been given in the Federal Courts, it is my opinion that the measure of the tax is the face value of the *certificate* of the stock regardless of the number of *shares* it represents, and that this applies to stock "with face value" and stock "without face value."

This opinion shall be considered as superseding all former opinions by me on this subject.

DOCUMENTARY STAMP TAX

August 22, 1934.

DOCUMENTARY STAMP TAX LIABILITY OF STANDARD FORM OF
AGREEMENT BETWEEN CONTRACTOR AND OWNER; BETWEEN
CONTRACTOR AND SUBCONTRACTOR, AND BETWEEN OWNER
AND ARCHITECT*Dear Sir:*

This will acknowledge receipt of your letter of August 18th in which you request my opinion as to whether or not the following forms, when properly filled out and executed, will be subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, to-wit:

1. The Standard form of Agreement between Contractor and Owner for Construction of Buildings, issued by the American Institute of Architects for use when a stipulated sum forms the basis of payment;

2. The Standard form of Subcontract for use in connection with the Fourth Edition of the Standard form of Agreement and general conditions of the contract;

3. The Standard form of Agreement between Owner and Architect issued by the American Institute of Architects for use when a percentage of the cost of the work forms a basis of payment.

Article 3 of the first form above mentioned reads as follows:

"Article 3. The Contract Sum—The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

(State here the lump sum amount, unit prices, or both, as desired in individual cases.) * * *

Section 4 of the second form above mentioned reads as follows:

"Section 4. The Contractor agrees to pay the Subcontractor for the performance of his work the sum of (\$———) in current funds, subject to additions and deductions for changes which may be agreed upon and to make payments on account thereof in accordance with Section 5 hereof. * * *."

There is a provision in the third form above mentioned whereby "the owner agrees to pay the architect at the rate of% hereinafter called the base rate, computed and payable as stated in the said 'Conditions', and to make any other payments and reimbursements arising out of the said 'Conditions'." It appears that this form, when properly filled out and executed, may or may not give the minimum or maximum cost of the building to be erected.

It is my opinion:

(1) That the first form above mentioned, when properly filled out and executed, will be subject to the terms and provisions of Chapter

DOCUMENTARY STAMP TAX

15787, supra, because it contains a definite obligation to pay a certain sum of money.

(2) That the second form above mentioned, when properly filled out and executed, will be subject to the terms and provisions of Chapter 15787, supra, because it contains a definite obligation to pay a certain sum of money.

(3) That the third form above mentioned, when properly filled out and executed, will be subject to the terms and provisions of Chapter 15787, supra, because it contains a definite obligation to pay money.

August 18, 1934

APPLICABILITY OF DOCUMENTARY STAMP TAX LAW TO PREFERRED STOCK ISSUED BY A STATE BANK AND PURCHASED BY THE RECONSTRUCTION FINANCE CORPORATION

Dear Sir:

I have your letter requesting my opinion upon the following question:

Is Preferred Stock, issued by a State bank and purchased by the Reconstruction Finance Corporation, subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act?

Chapter 15680, Laws of Florida, Acts of 1933, authorize a bank chartered under the Laws of Florida to issue and sell Preferred Stock. The Reconstruction Finance Corporation has authority to purchase Preferred Stock issued by a State bank. 12 U. S. C. A., Paragraph 51-d. There is nothing in either of the Acts above referred to that exempts such Preferred Stock from the terms and provisions of the Florida Documentary Stamp Tax Act.

It is my opinion that stock issued by a bank chartered under the laws of the State of Florida and purchased by the Reconstruction Finance Corporation, is subject to the terms and provisions of Chapter 15787, supra, known as the Florida Documentary Stamp Tax Act.

July 25, 1934

DOCUMENTARY STAMP TAX ON ORIGINAL ISSUE OF STOCK WHERE STOCK IS CHANGED FROM PAR VALUE TO NO PAR VALUE

Dear Sir:

I have your letter in which you state the following facts:

"A corporation issued prior to the effective date of the Florida Documentary Stamp Tax Act, 1000 shares of stock having a par value of \$100 per share. Recently this corporation

DOCUMENTARY STAMP TAX

amended their charter transferring \$100,000 from surplus account to capital account and issuing 3,000 shares of no par value, 2,000 of these shares being issued to the original stockholders at a rate of two for one of the par value stock."

You request my opinion as to whether all or any part of the new issue of stock will be subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931.

It is my opinion that:

1. The 2,000 shares of stock of no par value to be issued in lieu of the 1,000 shares of common stock of the par value of \$100, will not be subject to the Florida Documentary Stamp Tax Law, because the exchange of this stock does not effect a change of ownership of the stock or any interest in the corporation. Under this exchange each stockholder will own substantially the same corporate interest which he owned before the exchange was effected.

2. If and when the shares of stock of no par value, in addition to the 2,000 shares above mentioned, are issued, they will be subject to the Florida Documentary Stamp Tax law, because they will represent a transfer of an interest in the corporation. The tax will be computed under Paragraph 2 of Schedule A of Chapter 15787, *supra*, as this will be considered an original issue of stock.

See the case of *Shreveport-El Dorado Pipe Line Company, Inc., versus McGraw*, 63 Fed. (2d.) 202, (5th Circuit).

March 30, 1934

DOCUMENTARY STAMPS REQUIRED ON WRITTEN LEASE

Dear Sir:

It is my opinion that under Section 1 of Chapter 15787, Acts of 1931, documentary stamp tax act, any person, firm or corporation who makes, signs, issues, executes, etc., or for whose benefit or use the same are made, is liable for the tax; and, therefore, the lessee in a written lease would be liable for the documentary stamp tax on a lease.

This is borne out by the provisions in Section 4, which impose a criminal liability upon any person who makes, signs, issues or accepts any instrument, document or paper involved, without the full amount of the tax thereon having been fully paid. The lessee is clearly criminally responsible under this section.

The inquisitorial powers, provided for by the act, of the Comptroller extend to any person liable to pay the tax; and, therefore, such powers extend to the lessee.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DOCUMENTARY STAMP TAX

July 24, 1934

AMOUNT OF DOCUMENTARY STAMPS REQUIRED ON 99
YEAR LEASES

Dear Sir:

I have your letter in which you request my opinion as to the amount of Documentary Stamps required to be placed upon a 99 year lease executed in Florida.

It is my opinion that under Chapter 15787, Laws of Florida, Acts of 1931, Documentary Stamps should be affixed to a 99 year lease executed in Florida at the rate of 10¢ per each \$100.00 of the total amount to be paid under the lease. See my opinion of February 2, A. D. 1934, addressed to you, entitled "Re: Application of Documentary Stamp Tax Law to Lease Option."

February 2, 1934

APPLICATION OF DOCUMENTARY STAMP TAX LAW
TO LEASE-OPTION

Dear Sir:

This acknowledges receipt of your communication of February 2nd, enclosing copy of a rental agreement and option to purchase being used by the General Liquidator in connection with certain trusts which he is administering.

This rental agreement or lease obligates the leasee to pay a sum of money each month for a designated period; there is also contained an option to buy, which the leasee has the right to exercise on or before thirty days after the expiration of the lease agreement, at which time the purchase is to be completed. The purchase is subject to the approval of the State Comptroller and the local Circuit Court, with the sum of the purchase price set out as being a definite sum plus all expenditures made by the lessor for fire and windstorm insurance, and for repairs and maintenance from the date of the rental agreement, together with taxes or assessments paid by the lessor after the execution of the rental agreement.

Answering your inquiry I am of the opinion that this constitutes an obligation to pay money, and thus is taxable under the Documentary Stamp Tax Act. I am further of the opinion *that the value of the lease determines the amount of the tax and not the contemplated purchase price*, because there is no obligation to pay the latter until the exercise of the option.

DOCUMENTARY STAMP TAX

January 11, 1934

TRANSFERS AND ASSIGNMENTS TO TRUSTEES AS SUBJECT TO
DOCUMENTARY STAMP TAX*Dear Sir:*

I have your letter of January 9th, in which you request my opinion upon the following:

You state in your letter that you are advised that certain assets consisting of lands, judgments, notes secured by mortgages, crop liens and certificates of shares of stock of the First State Bank of Fort Meade, which is now in liquidation, are about to be transferred to Trustees under the terms of a Trust Agreement; that the Trustees are not buying these assets and are taking title thereto only for the purpose set forth in the Trust Agreement; that Mr. ——— desires to know if you consider a transfer of these assets as being subject to the terms of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

It is my opinion that the following documents which will be involved in the transfer of the assets of the bank to the Trustees will be subject to the Documentary Stamp Tax Act:

1. Deed transferring or conveying the title to lands, assignments of: Judgments, crop liens. The tax on such instruments is measured by the consideration for the transfer, conveyance or assignment. In these cases the amount of stamps will be 10¢ on each deed, assignment of: Judgments, crop liens or mortgages.

2. Assignments or transfers of notes, secured and unsecured. The tax on such instruments is measured by the face value of the indebtedness or obligation assigned or transferred.

3. Transfers or assignments of shares of stock. The tax on such instruments is measured by the face value of the stock and where such shares are without par value the tax shall be 10¢ on the transfer of each share.

December 7, 1933.

ASSIGNMENT OF NOTES SUBJECT TO DOCUMENTARY STAMP
TAX ACT*Dear Sir:*

I have your letter in which you request my opinion upon the following questions:

Where a promissory note, secured by mortgage on real estate located in Florida, is endorsed and delivered to a bank in Florida as collateral security for a loan and at the same time there is executed and delivered to the bank a formal written Assignment of the Mortgage securing the

DOCUMENTARY STAMP TAX

note, which of these writings are subject to a documentary stamp tax because of this transaction?

After the loan is paid, the promissory note and mortgage securing the same are endorsed and assigned by the bank to the owner thereof, which of these writings are subject to a documentary stamp tax?

In answer to your first question, it is my opinion that the following writings would be subject to the documentary stamp tax because of this transaction:

1. The promissory note representing the money due the bank for the loan;
2. The promissory note secured by the mortgage which was endorsed and delivered to the bank as collateral security.

In answer to your second question, it is my opinion that the following writing would be subject to the documentary stamp tax because of this transaction:

Promissory note secured by the mortgage.

You are referred to paragraphs 4 and 5 of Schedule A of Chapter 15789, Laws of Florida, Acts of 1931, for the amount of stamps that should be affixed to each of these writings.

December 7, 1933.

DOCUMENTARY STAMPS REQUIRED ON SUB-LEASE

Dear Sir:

You state in your letter of December 2nd that your client owns two long term leases upon property located in Florida and that the owner is about to execute a long term lease whereby it will sub-lease a part of the property covered by the original leases. You request my opinion as to whether or not the lease which will sub-lease a part of the property covered by the original leases, will, if executed, be subject to the Florida Documentary Stamp Tax Act.

A lease conveys a limited interest in land, to-wit: the right of possession and enjoyment thereof during the life of the lease.

It is my opinion that the lease referred to in your question, whereby a part of the property covered by the original leases will be sub-leased, will be subject to the provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

November 29, 1933.

OPTIONS NOT SUBJECT

Dear Sir:

On November sixth, you enclosed copy of letter from———, making inquiry with reference to the advocacy of the documentary stamp

DOCUMENTARY STAMP TAX

tax act, Chapter 15787, Acts of 1931, to options. On November ninth, I wrote you suggesting that it would be well to secure a copy of the particular option referred to. I have before me letter of—— to you under date of November twenty-fourth, enclosing copies of two options.

From an examination of said options, it does not appear that the same require documentary stamps by virtue of any written obligation to pay money, for the reason that no obligation is shown.

The only other ground on which said instruments would be subject to the tax would be that said instruments convey some interest in the lands described therein. The only right that optionees appear to have is the right to exercise an option of purchase, if desired, and it does not appear that said instruments convey any interest in the lands described therein. It is my opinion, therefore, that the said instruments are not subject to the documentary stamp tax act.

As a basis for the above opinion, your attention is called to the case of Wolfe vs. Daugherty, 103 Fla. 432, 137 So. 717. The third headnote, which was written by the Court, reads as follows:

"Where a contract, signed by the owner of land and accepted by a proposed purchaser, is a mere option to purchase, described lands within a stated time on specified conditions and for a consideration that is appropriate to and has reference only to the option granted, and the vendee had not duly accepted the terms specified and duly offered to perform, the vendee would then have no equitable interest in the land and no right to an equitable remedy, whatever may be the vendee's remedy at law for a default or breach by the vendor."

October 9, 1933.

LEASES ON R. R. PROPERTY SUBJECT

Dear Sir:

I have your letter of October 4th, in reference to "the application of the Florida Documentary Stamp Tax Act to leases of railroad property such as warehouses, terminal facilities, etc."

As stated in your letter, I have on several occasions ruled that leases of land are subject to the provisions of the Documentary Stamp Tax Act. These rulings form the basis of a departmental ruling by the Comptroller which has been acted upon over a long period of time.

It is my opinion that: "leases of railroad property such as warehouses, terminal facilities, etc.," are subject to the Documentary Stamp Tax Act of Florida.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DOCUMENTARY STAMP TAX

September 16, 1933.

CHATTEL MORTGAGE AND ASSIGNMENT OF WAGES IN ONE
INSTRUMENT; MORTGAGES INCORPORATING EVIDENCE
OF INDEBTEDNESS

Dear Sir:

Replying to yours of September 9th, with which you enclose correspondence propounding certain questions relative to the Documentary Stamp Tax Law, permit me to say where a written obligation to pay money is in the form of a chattel mortgage and assignment of wages, and both the chattel mortgage and the assignment of wages is but one instrument, it is my opinion that this, being one transaction, requires but one stamp.

You request my construction of the last sentence in paragraph 4, Schedule A, of Chapter 15787, Acts of 1931, which reads as follows:

"Mortgages which incorporate the certificate of indebtedness not otherwise shown in separate instruments are subject to the tax at the same rate."

I construe the language quoted to mean that where the indebtedness is shown in the mortgage and there is no mortgage note, then the stamps should be attached to the mortgage. But where there is one or more mortgage notes and the stamps are placed upon the notes, it is not necessary to also place stamps upon the mortgage.

August 22, 1933.

RETAIN TITLE CONTRACT

Dear Sir:

I have your letter of July 31st, asking my opinion as to whether Documentary Stamps are required upon the following instruments when executed:

1. This is a retain title contract used by Jacksonville Gas Company. In the contract the purchaser agrees to pay a certain price upon certain terms for the work, material and equipment described therein. The title to the property is retained by the Jacksonville Gas Company until the contract price is paid in full. There is an enforceable obligation upon the part of the purchaser. It is my opinion that this instrument, when executed, is a written obligation to pay money and is subject to the provisions of the Documentary Stamp Tax Law.

2. This is a form for use in leasing pine timber for turpentine purposes. It is my opinion that this is an instrument, when executed, whereby an interest in land is granted and transferred, and the same is subject to the provisions of the Documentary Stamp Tax Law.

In *King v. State*, 43 Fla. 211, 31 So. 254, the Supreme Court held

DOCUMENTARY STAMP TAX

that a lease on pine timber for turpentine purposes "does purport to grant an estate in land for a term of more than two years, and is executed with only one subscribing witness and is, therefore, under the above statute (Statute of Fraud) invalid and ineffectual as a lease for such term."

See also *Richbourg, et al, v. Rose*, 53 Fla. 173, 44 So. 69.

September 16, 1933.

DOCUMENTARY STAMPS REQUIRED ON LEASES FOR LANDS AND BUILDINGS FOR USE IN OUTDOOR ADVERTISING

Dear Sir:

I have before me the following forms of leases upon which you ask my opinion as to whether these forms, or either of them, when executed, will become subject to the Documentary Stamp Tax Law, to-wit:

1. Forms used by General Outdoor Advertising Company:

(a) *Ground Lease*: This form is used by the company to lease ground upon which to erect advertising sign structures.

(b) *Roof Lease*: This form is used by the company to lease the use of the roof of a building for advertising purposes.

(c) *Wall Lease*: This form is used by the company to lease the side of a building, or a wall, for advertising purposes.

2. This form is used by Packer's of Florida, Inc., apparently for the purpose of leasing ground upon which to erect advertising sign structures.

It is my opinion that each of the lease forms above mentioned will, when executed, become subject to the Documentary Stamp Tax Law, because each form is an instrument in writing whereby an interest in land will be granted to the lessee.

May 3, 1933.

SHARES OF STOCK TRANSFERRED TO EXECUTOR SUBJECT

Dear Sir:

Replying to your letter of April 24th in which you request an opinion as to whether or not where shares of stock, recorded on the books of a Florida corporation in the name of the deceased owner of said shares of stock, are transferred on the books of the corporation to the executor of the estate of the deceased owner, such transfer would require documentary stamps under the provisions of Chapter 15787, Acts of 1931, permit me to say:

The third paragraph of Schedule A of Chapter 15787, Laws of Florida, Acts of 1931, contains the following provision:

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DOCUMENTARY STAMP TAX

"On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stocks or profits or interest in property or accumulations in any corporation, or rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, *whether entitling the holder in any manner to the benefit of such stock interests, rights or not*, on each \$100.00 of the *face value or fraction thereof*, 10¢, etc."

It will be seen from the provisions of the Act above quoted that where shares of stock are transferred upon the books of a corporation from the name of one person to that of another, even though the person to whom the transfer is made acquires no beneficial interest in the stock transferred to him, the stamp tax must be paid.

It is my opinion, therefore, that where shares of stock are transferred on the books of a corporation in this State from the name of the deceased owner thereof to that of the executor of the estate, the documentary stamps must be attached to the books of the corporation upon which the transfer is made.

April 7, 1933.

WHEN DEED OF CORRECTION REQUIRES ONE STAMP

Dear Sir:

Complying with your request for an opinion as to whether deeds executed to correct errors in deeds which had theretofore been executed and recorded, would require documentary stamps, it is my opinion that such corrective deeds fall within the requirement of the Documentary Stamp Tax Act, the amount of the tax being dependent upon the consideration therefor.

In other words, such a deed is required to have one stamp, and if the same be executed without any further consideration, then that for which the prior deed was executed, and if the full amount of stamps required were placed upon the former deed, then in such event only one stamp would be required on the deed of correction.

SECTION 3

INTANGIBLE PERSONAL PROPERTY TAXES

August 29, 1934

ASSESSMENT OF INTANGIBLE PERSONAL PROPERTY TAXES UPON
PROMISSORY NOTES IN THE HANDS OF THE TRUSTEE AND
BONDS IN THE HANDS OF A PURCHASER, WHICH WERE
ISSUED BY THE TRUSTEE AND ARE SECURED
BY THE PROMISSORY NOTES

Dear Sir:

I have your letter of August 22nd, in which you state the following facts:

A corporation, being the owner of certain promissory notes secured by mortgages, transferred them to a bank as trustee for the purpose of the trustee issuing bonds which were to be secured by the notes and mortgages.

You request my opinion as to whether the promissory notes in the hands of the trustee and the bonds in the hands of a purchaser are subject to the terms and provisions of Chapter 15789, Laws of Florida, Acts of 1931, known as the Intangible Personal Property Taxation Act of 1931.

It is my opinion that:

(1) Under Chapter 15789, *supra*, a trustee is required to make a return to the County Assessor of Taxes of all Intangible Personal Property in his possession and under his control and the Assessor is required to assess the same against the trustee. See Section 8 of this Act and *State et al., vs. Beardsley*, 82 So. 794. The promissory notes, secured by the mortgages, in the hands of the trustee are subject to the terms and provisions of Chapter 15789, *supra*.

(2) The bonds issued by the trustee are Intangible Personal Property in the hands of the purchaser thereof, and if the purchaser, being the owner, is a resident of Florida and is not an instrumentality of the Federal Government, the bonds are subject to the terms and provisions of Chapter 15789, *supra*.

August 28, 1934.

ASSESSMENT OF INTANGIBLE PERSONAL PROPERTY TAXES
UPON COMMERCIAL PAPER ON AUTOMOBILES, WHICH
IS ASSIGNED TO THE BANK

Dear Sir:

I have your letter of August 22nd in which you state the following facts:

A company dealing in commercial paper on automobiles assigns, transfers and sets over this paper to a bank. The company makes col-

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INTANGIBLE PERSONAL PROPERTY TAXES

lections on the paper and when the bank receives its money, the paper is re-assigned to the company. It is the contention of the company that they transfer *title* to the paper to the bank, *but with recourse*, and that *title* to the paper being in the bank, it cannot be assessed as Intangible Personal Property of the company.

You request my opinion as to whether the company is liable for the taxes that may be assessed on the paper under Chapter 15789, Laws of Florida, Acts of 1931, known as the Intangible Personal Property Taxation Act of 1931.

It is my opinion that if there is a bona fide sale of the paper to the bank, even *with recourse*, then after the sale the company is not the owner thereof and will not be liable for the Intangible taxes thereon, provided, of course, that the sale occurs prior to the time the lien for these taxes takes effect, to-wit, January 1st. On the other hand if the transaction between the company and the bank is a loan, and the paper is assigned, transferred and set over to the bank *as collateral security for the loan*, then the real owner of the paper in the company and, being the owner, it will be liable for the Intangible Personal Property Taxes thereon.

May 15, 1934.

BONDS ISSUED BY CANADIAN GOVERNMENT AND OWNED
BY RESIDENT OF FLORIDA, SUBJECT TO TAX

Dear Sir:

I have your letter requesting my opinion as to whether bonds issued by the government of Canada and owned by a resident of Florida are subject to the terms and provisions of Chapter 15789, Laws of Florida, Acts of 1931, known as the "Intangible Personal Property Taxation Act of 1931."

The statute defines Class A Intangible Personal Property "as being all stocks, or shares of incorporated or unincorporated companies, all bonds except bonds of the several municipalities and counties of the State of Florida, and also such bonds or governmental bonds as may be exempt from taxation under the Constitution or laws of the United States or the State of Florida."

I do not find that bonds issued by the Government of Canada and owned by a resident of Florida are exempt from taxation in Florida under the Constitution or laws of the United States or the State of Florida.

It is my opinion that the bonds referred to by you are subject to the terms and provisions of Chapter 15789, *supra*, known as the "Intangible Personal Property Taxation Act of 1931."

INTANGIBLE PERSONAL PROPERTY TAXES

JANUARY 5, 1934

ASSESSMENT OF NATIONAL BANKS

Intangible Personal Property belonging to a National Bank is not subject to taxation in the State of Florida (Stock of a National Bank is owned by an individual and not the bank, see National Bank Stock).

ASSESSMENT OF STATE BANKS

Intangible Personal Property belonging to a State Bank in Florida is subject to the intangible tax and should be returned by the bank to the County Assessor of taxes in the County where the bank is located.

When returned it should be assessed upon the same basis and at the same rate as intangible property belonging to an individual resident of Florida. A state bank when making its return may exempt all bonds issued by the several municipalities and counties of the State of Florida and such bonds or governmental bonds as may be exempt from taxation under the constitution or laws of the United States or the State of Florida. This of course includes bonds and all other securities issued by the United States Government and bonds or securities issued by agencies of the United States Government which are exempt by law from state taxation, such as bonds issued by the Reconstruction Finance Corporation.

It may seem a harsh rule which requires the Tax Assessor to assess Intangible Personal Property belonging to a State Bank, and at the same time prohibits him from assessing Intangible Personal Property belonging to a National bank. This is not the fault of the taxing officials or the legislature of Florida. The discrimination is brought about by the fact that a National bank is considered as an instrumentality of the Federal Government and can only be taxed to the extent as may be agreed to by the Congress. Under the Federal law, a State may tax the shares of stock issued by a National Bank but the Congress has never given its consent for a State to tax Intangible Personal Property belonging to a National Bank.

DISTINCTION BETWEEN INTANGIBLES OF BANK AND SHARES OF STOCK ISSUED BY BANK

We must keep clearly in mind the distinction between intangible personal property belonging to a bank as a corporate entity and the shares of stock issued by the bank which are intangible personal property belonging to the stockholders who are residents of Florida. The value of the shares of stock issued by a bank located in Florida and in the hands of its stockholders who are residents of Florida, is not necessarily the same as the value of the intangible personal property owned by the bank. A tax on the property of the bank is not the legal equivalent of a tax on the shares of stock issued by the bank and in the hands of the stockholders.

STATE BANK STOCK

The shares of stock issued by banks other than National banks and owned by a resident of Florida are subject to the tax in the hands of the owner. This includes shares of stock issued by State Banks located in Florida or in other states.

INTANGIBLE PERSONAL PROPERTY TAXES

NATIONAL BANK STOCK

Shares of stock issued by a National Bank located in Florida and owned by a resident of Florida are subject to the intangible tax and the owner should make a return thereof to the County Assessor of Taxes in the county where he resides.

However, shares of stock issued by a National Bank located in a state other than Florida and owned by a resident of Florida are not subject to the Intangible Tax in Florida, because the Congress has passed a Law requiring a National Bank to make a return, to the County Tax Assessor in the place where the bank is located of the shares of stock owned by non-resident shareholders.

All National Banks in Florida are required by an Act of Congress to make a return to the County Assessor of Taxes in the county where its principal office is located, of the shares of stock issued by it *which are owned by non-residents of the State of Florida*. A resident of Florida who owns shares of stock issued by a National Bank located in Florida and shares of stock issued by a State or any other bank located in Florida or elsewhere, (except stock of a National Bank located outside of Florida) should make a return of said stock to the County Assessor of Taxes in the county of his residence.

ASSESSMENT OF BANK STOCK

The law requires the assessment against shares of stock in the hands of a resident of Florida to be made against the owner thereof. There is no law which authorizes or permits the Tax Assessor to assess such shares of stock against the bank issuing them or against anyone else except the resident stockholders; provided, of course, that a National Bank is required to return to the County Assessor of Taxes the shares of stock owned by non-resident stockholders, and the Assessor is required to assess the value of these shares against the bank.

NO DEDUCTION IN ARRIVING AT VALUE OF BANK STOCK

In arriving at the value of the shares of stock issued by a State or National bank, no deduction is to be allowed because some of the capital of the bank is invested in non-taxible property or tax-exempt securities, such as bonds of the United States Government.

INFORMATION FROM BANKS FOR STOCK ASSESSMENTS

The question will arise as to whether or not the Assessor can force a State or National bank to furnish him with the names and addresses of its stockholders and the number of shares owned by each. The supervision of State Banks is under the State Comptroller who likewise is charged with the duty of administering the Intangible Tax Law. If State Banks do not give this information willingly, it is a matter of record in the Comptroller's Office. As to the National Banks, the Congress has passed a law requiring the bank to keep a list of the names and residence of the stockholders and the number of shares held by each. This list is subject to the inspection of officers authorized to assess taxes under the authority of the State of Florida, during the business hours of each day in which

INTANGIBLE PERSONAL PROPERTY TAXES

business may be legally transacted (see Paragraph 5210 R. S. and Paragraph 62, Title 12, U. S. C. A.).

BANK DEPOSITS

Bank deposits owned by a resident of Florida but actually in a bank outside of the State of Florida, on January 1st of the tax year, are subject to the tax.

BONDS UNDER CLASS A

All bonds are taxable under Class A except bonds issued by the several municipalities and counties of the State of Florida and such bonds or governmental bonds as may be exempt from taxation under the Constitutions or laws of the United States and of the State of Florida and except bonds secured by a lien upon real or personal estates located in Florida.

The following bonds and securities are exempt from the operation of this Act: All bonds or securities issued by any city, County, Board of Public Instruction, Drainage District, or other taxing district in Florida, and bonds issued by the United States government, and bonds issued by agencies of the United States Government which are exempt by law from State taxation such as bonds of the Reconstruction Finance Corporation.

The following bonds are subject to the provisions of this law and should be taxed as Class A Intangible Personal Property when owned by a resident of Florida: All bonds whether issued by an incorporated or unincorporated company, or by an individual, which bonds are not secured by a lien upon real or personal estates situated in Florida; all bonds issued by any state other than Florida and bonds issued by any county, city or other taxing district in a state other than the State of Florida.

All promissory notes which are *under Seal* and which are not secured by real or personal estates situated in Florida are taxable as Class A Intangible Personal Property. This means all promissory notes *under seal* that are unsecured as well as all promissory notes which are secured by real or personal property located in a state or country other than the State of Florida.

RULE FOR BONDS

A bond is an instrument *under seal* whereby the obligor binds himself to pay a certain sum of money to the obligee at a day appointed.

CLASS B

Under Class B comes all notes, bonds and other obligations for the payment of money which are secured by mortgage, deed of trust or other leases or liens upon real or personal estates situated in Florida, provided that only that part of the value of the mortgage, deed of trust, lease, or other liens, the property of which is located within the State, shall bear to the whole value of the property described in the obligation, shall be classified as Class B. Occasionally you will have a situation where a resident of Florida will own a bond which is secured by property situated partly in Florida and partly in one or more other states. Under this section of the Act, only that part of the value of the lien, the property of which is located in this state,

INTANGIBLE PERSONAL PROPERTY TAXES

shall bear to the whole value of the property described in the lien shall be taxable under Class B. *However, the remaining value of the bond will be taxable under Class A.* The only notes, bonds or other obligations for the payment of money subject to taxation under Class B are such as are secured by mortgage, deed of trust or other leases or liens upon real or personal estates situated in Florida.

CLASS C

All property which does not come under Class A or B, and which is not exempt under this Act, comes under Class C. Here should be placed the following Intangible Personal Property belonging to residents of Florida: Accounts Receivable, Unsecured Notes which are *not under seal*, and Notes which are *not under seal*, but which are secured by real or personal estates situated in a state or county other than the State of Florida. The above list of Intangible Personal Property which comes under Class C is not intended to be complete but is given to illustrate the general class.

VALUES OF STOCK, BONDS, MORTGAGES, NOTES, LEASES

In assessing shares of stock, bonds, mortgages, notes, leases, the *true cash value* should be determined as of January 1st of the tax year. In the case of securities listed on the open markets, a copy of the newspaper published on January 1st will give the desired information. If the item in question is not found there, then a record of bona fide sale on or about January 1st, or a bona fide offer to purchase on or about January 1st, or an agreement between the owner of the property and the Tax Assessor as to the *true cash value*. If none of these methods can be used then the Tax Assessor must use his best judgment as to the true cash value. The Tax Assessor is the sole judge of value in his county.

INSTALLMENT NOTES

Installment notes should be returned at their full *true cash value* as of the first day of January of each tax year.

WINTER RESIDENTS

Where a person maintains a winter home and votes in Florida and holds mortgages in Florida, but has his office in another State, such mortgages are subject to taxation as intangible personal property.

CORPORATIONS, STOCK AND SHARES

Distinction must be kept clearly in mind between Intangible Personal Property belonging to a corporation as a corporate entity and the shares of stock issued by the corporation which is Intangible Personal Property belonging to the shareholders who are residents of Florida. A tax on the property of a corporation is not the legal equivalent of a tax on the shares of stock issued by the corporation and in the hands of stockholders.

CORPORATION MUST MAKE RETURN

A corporation must return for taxation to the County Assessor of Taxes all Intangible Personal Property belonging to it or over which it has the control, management, or custody in this state which is subject to taxation under the Laws of Florida.

INTANGIBLE PERSONAL PROPERTY TAXES**CORPORATION MUST MAKE RETURN AT PRINCIPAL PLACE OF BUSINESS**

If a corporation has branch offices in this state, it must make its return for all branches at its principal office or place of business in Florida.

FOREIGN CORPORATIONS

The question may come up in regard to intangibles held in Florida by a foreign corporation authorized to do business in Florida. Are they subject to tax? "The general rule in determining the place or situs where intangibles are taxable is: that for the purpose of taxation intangibles are considered as having the situs of the domicile of their owner even though the instruments themselves may be physically in some other state. However, there is a very material exception to this general rule and that exception is that intangible personal property may acquire for the purposes of taxation a business situs in a state other than the state in which the owner is domiciled."

"While it has been said that it is impossible to frame an accurate formula which will include every case properly subject to the operation of the rule of business situs and exclude every case legally beyond its operation, as each case is largely dependent upon its own facts, the term business situs has been defined as a situs in a place other than the domicile of the owner, where such owner, through an agent, manager or the like, is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency, and the courts have laid down certain conditions which ordinarily should exist in order that intangibles may have a business situs apart from the domicile of the owner. Thus the necessity for some business use of the intangibles involved or some authority to manage, control, or deal with them in a business way in the state in which, it is claimed, a business situs exists, has been asserted or recognized. So, also, there should usually be some degree of permanency of location of the credits or obligations involved and of continuity of the business or transactions affecting or giving rise to such credits or obligations, mere temporary presence of the Intangible Property in question, or of the evidence thereof, for a particular purpose, mere presence for safe keeping, or a single or isolated transaction is not sufficient. While the view has been taken that intangible property owned by a resident is not taxable where such property has acquired a business situs in another state or territory, in some cases the propriety of taxing such property both in the state of the domicile of the owner and in the state where it has a business situs has been recognized."

SHARES OF STOCK

Shares of Stock of Incorporated or Unincorporated companies are Intangible Personal Property and are taxable under Class A.

ADMINISTRATORS, EXECUTORS

Intangible Personal Property in the hands of an administrator or executor is taxable at the place of the granting of the letters of administration, which is usually the place of the domicile of the deceased. If

INTANGIBLE PERSONAL PROPERTY TAXES

the administrator or executor appointed by a Probate Court in Florida resides in Florida, or if he resides in a state other than the state of Florida and removes his Intangible Personal Property to his place of residence, such property will nevertheless, be subject to taxation in the county in Florida where he was appointed.

TRUSTEES

Intangible Personal Property of a deceased person which passes into the hands of a *trustee* is generally taxable at the domicile of the trustee even though such domicile may be in a state other than the state where the will was probated and the trustee appointed.

BASIS OF ASSESSMENT

Section 7 provides that the taxable value of Intangible Personal Property assessed on the tax roll shall be on the same basis of valuation as is used for the assessment for taxation of real or other personal property. This is an extremely important matter in preparing a valid roll. For example, if the basis of assessment in a county on real estate is 50% of its actual value, then in order to have a valid roll, you must assess the Intangible Property on the basis of 50% of its actual value.

STOCK OF CORPORATION OWNED BY ONE PERSON

If all the shares of stock of a corporation are owned by a resident of Florida and the only assets of the corporation are lands located in Florida and taxes upon the lands have been paid, the shares of stock of the corporation are subject to taxation as intangible personal property. It is not double taxation to require the owner of the shares of stock of such corporation to pay the tax therein required under the Intangible Tax Law. It is presumed that the owner of the shares of stock considers it a valuable right to have the corporation hold title to the property. If a person wishes to avail himself of the benefits of a corporation, he will be required to pay the Intangible Tax upon the shares of stock thereof.

NO DEDUCTIONS IN ARRIVING AT VALUE OF SHARES OF STOCK OF CORPORATION

In arriving at the value of shares of stock of a corporation held by a stockbroker, no deductions will be allowed because some of the capital of the corporation is invested in non-taxable property or tax exempt securities.

REPEAL OF SECTION 907, COMPILED GENERAL LAWS OF FLORIDA, 1927

The Intangible Personal Property Act *does repeal* Section 907, Compiled General Laws of Florida, 1927.

BACK ASSESSMENTS, OMITTED ITEMS

If for any reason Intangible Personal Property escapes taxation, the Tax Assessor is authorized to assess the same on the current tax roll for not more than the past three years.

INTANGIBLE PERSONAL PROPERTY TAXES**DECEASED PERSON—DURING TAX YEAR**

If a deceased person was a resident of Florida on January 1st of a tax year and died during the year, then the intangible personal property owned by him on January 1st of the tax year should be assessed against him, and the taxes due from such an assessment will be a lien upon the real and personal property belonging to the deceased at the time of his death.

COLLATERAL

If the owner of Intangible Personal Property has deposited it as security for a loan, he has not parted with the ownership thereof. Therefore, such collateral should be returned for taxation by the owner.

FOREIGN INSURANCE COMPANIES

See Foreign Corporations.

FIRE INSURANCE POLICIES

A fire insurance policy is a form of intangible personal property and should be assessed at its cancellation value as of January 1st of the tax year. If a loss has occurred then it should be assessed at its actual cash value as of January 1st of the tax year. This should be assessed as Class "A".

LIFE INSURANCE POLICY

The cash surrender value of a Life Insurance policy is a form of Intangible Personal Property. Since the obligation of the Insurance Company is *under seal* and is to pay a definite amount at a definite time, it is considered as a bond and is taxable under Class A.

ANNUITY

The same rule applies to any contract for an annuity where the contract has a present cash surrender value. If the contract does not have a present cash surrender value, then the present actual cash value should be determined and assessed accordingly.

**BONDS AND NOTES SECURED BY A LIEN ON REAL ESTATE
OR PERSONAL PROPERTY**

See Location of Property.

LOCATION OF PROPERTY

All bonds and promissory notes secured by a lien upon real estate or personal property located outside of the State of Florida and owned by a resident of Florida, are subject to the Intangible Tax Law of Florida and the bonds should be assessed as Class A, and the promissory notes if under seal, should be assessed as Class A, if promissory notes not under seal, then they should be assessed as Class C.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INTANGIBLE PERSONAL PROPERTY TAXES

DUTY OF ASSESSOR TO MAKE ASSESSMENT

Section 11 provides that even if a return is filed by the tax payer, this shall not prevent the Tax Assessor from determining and assessing the true taxable value according to his information and best judgment, or from determining or entering upon the return of the tax payer any item or items which he may find has been omitted therefrom. In other words, it is the intention of the Act that the tax payer can not preclude the Assessor from making an investigation of his own so as to determine what property belonging to the tax payer is subject to assessment.

OATH WITH RETURN

There is no provision in the statute requiring a return to be verified by oath. However, a false return, even though not verified by oath, might be construed to be a wilful failure or refusal to comply with the Act.

SECTION 4

INHERITANCE OR ESTATE TAXES

April 14, 1933.

CREDIT ALLOWED ESTATE FOR TAXES PAID TO
ANOTHER STATE*Dear Sir:*

Replying to your inquiry as to the proper credit to be allowed on the estate taxes to be paid to the State of Florida by reason of the inheritance tax paid to the Commonwealth of Massachusetts by reason of a portion of the property of deceased being situate in Massachusetts, it seems to me that the States should take the appraisal as to valuations fixed by the Federal Taxing authorities, as a basis for arriving at the value of such estates, and where the property of deceased is located in different states, the valuation as determined and accepted by the Federal government should be accepted by each State in arriving at the taxes to be paid.

In this particular case the Commonwealth of Massachusetts should have such part of the eighty per cent. of the taxes credited by the Federal Government to the States as the value of the property located in that State bears to the whole value of the property wherever situate.

In other words, if the Federal government, as a basis for computing the Federal inheritance or estate tax, fixed the value of the property of deceased located in Massachusetts, at \$15,000, then that should be taken by Massachusetts as the basis for arriving at the tax due that Commonwealth from the estate, and that would be the fair allowance or deduction to be made by the State of Florida on account of the tax paid to Massachusetts.

August 18, 1934.

COMMISSIONER OF REVENUE NOT AUTHORIZED TO REQUIRE
COUNTY JUDGE TO MAKE CERTAIN REPORT*Dear Sir:*

I have your letter of August 14th in which you request my opinion upon the following question:

Do you have authority under Subdivision "h" of Section 6 of Chapter 16015, Laws of Florida, Acts of 1933, to promulgate a regulation to the effect that the County Judges shall report to you under Section 23 of Chapter 16015, *supra*, *only* the estates of residents of Florida and the United States where the value of the gross estate exceeds \$50,000.00?

Subdivision "h" of Section 6, *supra*, reads as follows:

"The Commissioner may from time to time make such rules

INHERITANCE OR ESTATE TAXES

and regulations not inconsistent with this Act as he may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax provisions of the Revenue Act of the United States in so far as they shall be applicable hereto. The Commissioner may from time to time prescribe such forms as he shall deem proper for the administration of this Act."

Subdivision "b" of Section 7 of Chapter 16015, reads in part as follows:

"Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every decedent who at the time of his death was not domiciled in the United States whose gross estate shall include any real property situate and tangible personal property having an actual situs in the State of Florida and intangible personal property physically present within the State of Florida.

* * *"

Under Chapter 16015, *supra*, you, as Commissioner of Revenue, have authority to make such rules and regulations *not inconsistent with the Act* as you may deem necessary to enforce its provisions. See Subdivision "h", of Section 6, *supra*.

Section 23, *supra*, in positive terms requires the County Judges of the State to notify the Commissioner of Revenue, on or before the tenth day of each and every month, "of the names of all decedents, the name and address of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month,

* * *"

It is my opinion that you do not have authority to promulgate the regulation set forth in your question because it would be inconsistent with the terms of Section 23 of Chapter 16015, *supra*, which requires each County Judge, on or before the tenth day of each month to report to you "*all* estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month." (*Italics supplied*).

SECTION 5

MOTOR VEHICLE TAXES

August 6, 1933.

ARRESTS FOR VIOLATIONS SHOULD BE MADE BY SHERIFFS

Dear Sir:

Replying to yours of July 26th, in which you request my opinion on the question of whether or not the State Comptroller, his deputies, agents and employees may legally arrest persons for violation of the provisions of Senate Bill No. 498, Chapter 16082, Acts of 1933, and for violation of the Motor Fuel Tax Laws of this State, permit me to say that Section 25 of the Acts reads as follows:

"The Comptroller and his deputies, agents and employees shall have the power to make arrest without warrant for any violation of any provision or provisions of this Act, or for any violation of the Motor Fuel Tax Law of this State. In all such cases the person or persons arrested for any violation of any provision or provisions of this Act or of the Motor Fuel Tax Laws of this State shall be surrendered without delay to the Sheriff of the County in which the arrest was made, and formal complaint made against him, her or them in accordance with Law."

In view of the opinion of the Supreme Court in the case of *State ex rel Buford vs. Smith* 88, Fla. 151, 101 So. 350, it appears that the police powers of the State may be extended to state officers and his deputies, and that such officers may be authorized to arrest persons without warrant for violation of the Law. In the case cited the Supreme Court stated:

"The provisions of Section 5, Chapter 8541, Acts of 1921, relative to the powers of Traffic Officers, particularly as to making arrest without warrant when confined to matters that pertain to lawful violation of traffic laws and regulations are not violation of any indicated provision of organic law."

The traffic officers referred to in the Supreme Court opinion were appointed and commissioned by the Governor. The statute under consideration here, that is Senate Bill No. 498, Acts of 1933, authorizes the Comptroller, his deputy, agent and employee, to make arrest without warrant, the statute does not provide that the Comptroller's agent, deputy or employee be commissioned by the Governor, and for that reason I think that it would be best for the Comptroller, his deputies, agents and employees to make formal complaint against persons who violate the provisions of Senate Bill No. 498, and of the Motor Fuel Tax Laws of the State, and that arrest should be made only upon warrant served by the Sheriff or his Deputy.

MOTOR VEHICLE TAXES

April 18, 1934

SALES AGENCIES SUBJECT TO PERSONAL PROPERTY TAX
ON STOCK ON HAND JANUARY 1ST.*Dear Sir:*

I have your letter of April 9th in which you request my opinion upon the following question:

Are "automobiles owned by Sales Agencies and in their show room or on hand January 1st as stock * * * assessable as Personal Property?"

Section 13 of Article IX of the Constitution of the State of Florida reads as follows:

"Motor vehicles, as property, shall be subject to only one form of taxation which shall be a license tax for the operation of such motor vehicles, which license tax shall be in such amount and levied for such purpose as the Legislature may, by law, provide, and shall be in lieu of all ad valorem taxes assessable against motor vehicles as personal property. (Additional section, House Joint Resolution 753, Acts 1929; adopted at general election, November 4, 1930.)"

In construing an amendment to the Constitution, reference may be made to the history of the times when the amendment was adopted, in order to ascertain the old law, the condition sought to be changed and the remedy adopted. See 6 R. C. L., page 51, and cases cited; *State vs. Bryan*, 50 Fla. 293, 39 So. 929; *Sullivan vs. City of Tampa*, 101 Fla. 298, 134 So. 211.

The present amendment was adopted on November 4, 1930. At that time a motor vehicle was subject to personal property ad valorem taxes. See Section 896 and 813, C. G. L. of Florida, 1927, and Section 942 (1) C. G. L. 1934 Supplement. There was in effect at that time, Section 5 of Chapter 14574, Laws of Florida, Acts of 1929, the same being Section 1284 (1), C. G. L. 1934 Supplement, which provided that no motor vehicle should be registered and no license plate issued therefor unless and until the applicant had paid the ad valorem taxes assessed thereon, or had made it appear that the vehicle was not subject to the taxes. In addition to the ad valorem taxes, a motor vehicle, when operated on the highways of the State, was subject to the license tax.

For several years prior to the general election in November 1930, there was considerable agitation in the State for a reduction in taxes levied upon motor vehicles. Objection was raised to the gasoline tax, the amount of the license tax and the ad valorem tax. This latter tax was particularly objectional to many people and when the present amendment was submitted to a vote, it was adopted. In my opinion, it was the intention of the people, in adopting this amendment to relieve the motor

MOTOR VEHICLE TAXES

vehicle, when operated on the highways of the State, from ad valorem personal property taxes. There was no thought on the part of the people to exempt the motor vehicle from the ad valorem personal property taxes so long as the vehicle was not subject to the *license tax*. The motor vehicle becomes subject to the *license tax* only when it is "operated or driven upon the highways of the State, or which shall be maintained in this State." Section 1281 C. G. L. 1934 Supplement. While the motor vehicle remains as stock in trade of a motor vehicle dealer (sales agencies), it does not come within the above quoted part of the statute and is not subject to the *license tax*.

Motor vehicle dealers, at the time the amendment was adopted, were engaged in a very extensive business employing vast capital, a considerable part of which was invested in motor vehicles as their stock in trade, and as such were not subject to the *license tax*. If the amendment be construed as exempting such stock in trade, it will result in a discrimination against other merchants who are required to pay ad valorem taxes upon their stock in trade. There is nothing in the wording of the amendment, or in the history of the times when it was adopted, to indicate an intention to grant a special privilege by way of ad valorem tax exemption to motor vehicle dealers for that part of their capital invested in motor vehicles which are not subject to the *license tax*.

Our Supreme Court, in the case of *McLin, State Motor Vehicle Commissioner, et al., vs. Florida Automobile Owner's Protective Ass'n., Inc., et al.*, 141 So. 147, in discussing the character of the *license tax* under the amendment, said:

"The amount of the 'license tag' tax enacted under the Constitution, as amended, is not only collected as an excise tax on the privilege of using the roads, but as a property tax in substitution of the previously levied ad valorem taxes which were applicable to motor vehicles prior to the constitutional amendment."

Thus our Court recognized that the *license tax* referred to in the amendment only applies when the motor vehicle is used upon the highways. The exemption from ad valorem taxes only takes effect when the *license tax* becomes due.

From a consideration of the wording of the constitutional amendment above quoted, and the history of the times, it is my opinion that motor vehicles owned by Sales Agencies and in their show room or on hand in Florida on January 1st of the tax year as a part of their stock in trade, are subject to the personal property taxes levied by the State of Florida and the political divisions thereof. See the case of *State ex rel Byers-Prestholdt Motor Company vs. Minnesota Tax Commission* (1929), 227 N. W. 43.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
MOTOR VEHICLE TAXES

November 21, 1933.

COUNTY OFFICIALS TAKING ACKNOWLEDGMENTS ON
APPLICATIONS FOR LICENSE

Dear Sir:

I am in receipt of your letter of the 18th instant, making inquiry if a county officer is qualified to take acknowledgements on applications for motor vehicle licenses, when such officer is a duly appointed notary public of the State of Florida.

In reply I beg to say that I do not know of any statute on the subject, except the following appearing in the 1933 amendment of Section 1281, Compiled General Laws of Florida 1927, embraced in Chapter 16085:

"No tax collector, deputy tax collector or employee of the State or any county shall charge, collect or receive, any fee or compensation as Notary Public or otherwise, for any service in connection with the execution of any Notarial certificate to any application for license, application for title, registration, change of title or for other service incidental to the issuance of license tags."

Under the above quoted provision of the law, county officials are not prohibited from taking such acknowledgments, and there is no provision against charging for same, except that tax collectors, deputy tax collectors, and State and county employees are prohibited from receiving fees for such service.

September 11, 1933.

FOR HIRE LICENSE TAG FOR "PICK UP" TRUCKS NOT REQUIRED

Dear Sir:

This refers to your favor of August 30, relative to For Hire license tag for "pick-up" trucks.

This question of a For Hire license tax for "pick-up" trucks, is not a new one. The State Railroad Commission, on December 15, 1932, issued a circular, No. 17-A, covering "pick-up trucks—Common Carriers," and in part the circular uses the following language:

"The Motor Vehicle License Law requires all motor driven vehicles operated for compensation to obtain a for hire license tag, and, therefore, common carriers will be required to secure those tags for their pick-up trucks."

This question then came up by virtue of a letter from the Honorable W. F. Rogers, Attorney at Law, Jacksonville, Florida, under date of December 16, 1932, and after conferences with the Honorable Theo

MOTOR VEHICLE TAXES

T. Turnbull, Counsel for the Railroad Commission, I received a letter from Mr. Turnbull, under date of December 22, 1932, in which he states that "the Commission has suspended the enforcement of this Circular (Referring to Circular 17-A) until further notice."

Unless and until the State Railroad Commission should undertake to enforce Circular 17-A, it is my opinion that For Hire License Tags would not be required for trucks used purely as "pick-up" trucks, where there is no other charge made than the general transportation charge from the general point of assemblage.

July 11, 1933.

WHEN FOREIGN COMPANY IS REQUIRED TO PAY LICENSE

Dear Sir:

This refers to your favor of July 11, in which you request my opinion as to whether or not a Georgia Company, not a corporation, that comes into this State, solicits business, pays State and County taxes and competes with local business firms, is exempt from purchasing Florida Motor License tax.

It is my opinion that when a company comes into this State and does business on a plane with other concerns in the State, and they evidence this by paying a State and County tax, such company must purchase a Florida motor license, whether or not such company is incorporated.

January 28, 1933.

GOVERNOR NOT AUTHORIZED TO SUSPEND THE TWENTY-FIVE CENTS PENALTY ON LICENSE TAX

Dear Sir:

Section 1284 of the Compiled General Laws of Florida, 1927 (1010), as amended by Section 2 of Chapter 15625, Laws of Florida, Acts of 1931, provides in part as follows:

"On February 1st a penalty of twenty-five per cent. of the amount due shall be added to the price of each tag, and no tag shall be issued after February 1st for any vehicle which was liable for registration or re-registration as of January 1st, unless such penalty is paid, in addition to the price of the tag."

This is a civil penalty imposed by law, as to which no officer has any discretion, and becomes a fixed charge which cannot lawfully be suspended.

Section 11 of Article IV of the Constitution providing: "The Governor shall have power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, for all of-

MOTOR VEHICLE TAXES

fenses, except in cases of impeachment," applies to fines imposed upon conviction of criminal offenses or forfeitures of bail bonds in criminal cases, and does not apply to civil penalties such as that contained in Section 1284 (1010) of the Compiled General Laws of Florida, as amended by Section 2 of Chapter 15625, Acts of 1931.

January 26, 1933.

GOVERNOR NOT AUTHORIZED TO EXTEND TIME FOR
PAYMENT OF LICENSE TAX

Dear Sir:

I am in receipt of your letter of the 24th instant in which you state that "The Governor would like to know if under the present tag law, he has authority to grant an extension of time within which to purchase tags."

In reply I beg to say that after a review of the motor vehicle license laws as well as the State Constitution I find no authority for the Governor to grant such an extension.

Section 1285, Compiled General Laws of 1927, as amended by Chapter 15625, Laws of Florida, Acts of 1931, makes it unlawful for any person to operate over the highways of the State or any road or street any motor vehicle which shall not have affixed thereto the proper license plate or tag.

Section 1284, Compiled General Laws of 1927, as amended by Chapter 15625 of 1931, provides for registration and payment of the fee on January 1st of each year, and provides a penalty of twenty-five per cent. on February 1st.

Section 6 of Article IV of the State Constitution reads as follows:

"The Governor shall take care that the laws be faithfully executed."

February 9, 1933.

SERVICE CHARGE MAY BE CHARGED FEDERAL, STATE, COUNTY
OR MUNICIPAL GOVERNMENTS FOR NUMBER PLATES

Dear Sir:

This refers to my letter to you under date of January 31st, relative to a service charge on "motor vehicle number plates" issued to the federal, state, county and municipal governments, and the officers and employees thereof operating automobiles owned by the government.

Permit me to say Assistant Attorney General Campbell, without knowledge of the opinion already expressed by this office under date of February 3, 1932, holding that a service charge of 50¢ should be

MOTOR VEHICLE TAXES

charged upon all motor vehicle license tags and number plates issued, dictated the reply to your letter.

You will find the following provision in Section 1 of Chapter 15625, Acts of 1931, on page 1092:

"The service charge herein provided for shall be collected by the Motor Vehicle Commissioner on all license tags issued direct from his office, and the proceeds thereof paid into the Motor Vehicle Expense Fund."

There is also a provision under the same section and on the same page reading as follows:

"The State Motor Vehicle Commissioner by and with the approval of the Governor may authorize a service charge of not exceeding 50¢ for each application which is handled by the agent or agency, which service charge when so authorized may be collected and retained by such agent or agency from the applicant, as full compensation for all services rendered in connection with the handling of the application, and no expense shall be incurred by the State in connection therewith other than for delivery of license plates to such agent or agency."

In view of the provisions of the statute quoted above, it is my opinion that a service charge of 50¢ may be charged both by the "agent or agency," and by the Motor Vehicle Commissioner, on all license tags or plates issued to the federal, state, county or municipal governments.

January 26, 1933.

CORPORATION LIABLE ONLY ON ROUTE ON PUBLIC STREETS,
ROADS OR HIGHWAYS

Dear Sir:

Your letter of the 24th instant states that Pensacola Bridge Corporation of Pensacola operates as a common carrier for passengers under a certificate of public convenience and necessity from the Railroad Commission in conveying passengers from Pensacola to the beach.

I observe that the route traverses in part privately owned highways and in part public highways, and that you desire my opinion as to what portion of the route and mileage should be reported to your office as a basis for the payment of mileage tax under the provisions of Chapter 14764, Laws of Florida, Acts of 1931.

The mileage tax imposed by said Act is for the use of the public highways. The tax applies for the operation of certified motor vehicles "over the public highways of the State." See Section 16, Chapter 14764.

Section 1 of the Act defines "public highways" to mean "every

MOTOR VEHICLE TAXES

public street, road, or highway in this State." Tax statutes are strictly construed against the government and in favor of the taxpayer.

It is my opinion that the Pensacola Bridge Corporation is liable for the mileage tax on its route only on that part which constitutes a public street, road or highway. In other words, as shown by your letter, it is liable for the tax on the one and 2/10 miles over the city streets, and one and 2/10 miles on State Road No. 53. The remainder of the route appears to be privately owned, upon which no tax in my opinion can lawfully be collected.

SECTION 6

GASOLINE TAXES

July 27, 1933.

NOT CONSIDERED AS "OTHER SPECIAL TAXING DISTRICTS"

Dear Sir:

I have before me your letter of July 25th to which is attached the letter of Mr. H. O. Brown, City Attorney of Lake Butler. Mr. Brown suggests that the words "other special taxing districts of any counties," as used in Section 8 of Chapter 15659, Laws of 1931, being Section 1167 (23), Compiled General Laws, 1932 Supplement, "include incorporated cities and towns, that have contributed to the building of State roads through the corporate limits."

The Constitution recognizes distinction between certain governmental units, such as counties (Section 1, Article VIII) and cities (Section 8, Article VIII) and Special Tax School Districts (Section 17, Article XII). There is no provision in the Constitution which permits or forbids the creation by the Legislature of a "special taxing district." See *Consolidated Land Co. vs. Tyler*, 101 So. 280.

A "special taxing district" is a taxing district organized to accomplish "some particular public improvement where the character of the work necessary to realize the improvement is peculiarly temporary and special or where there is necessarily a particular improvement confined to some special work or construction." See *Jenkins, Tax Collector, vs. Entzminger*, 135 So. 785. An incorporated city or town does not come within this definition.

Considering Chapter 15659, Laws of 1931, in connection with what has been said, it is my opinion that the words as used in Section 8 of this law, to-wit: "other special taxing districts of any counties" does not refer to or include "incorporated cities and towns that have contributed to the building of State roads through the corporate limits."

June 4, 1934.

GASOLINE—PURCHASE OR STORAGE BY PAN AMERICAN
AIRWAYS*Dear Sir:*

This acknowledges receipt of your communication of May 31, 1934, in which you enclosed copies of the following instruments:

1. Contract for purchase of gasoline at Baton Rouge, Louisiana, between Standard Oil Company of Kentucky and Pan American Airways of New York.
2. Contract for transportation of gasoline from Baton Rouge to Port Everglades, Florida.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
GASOLINE TAXES

3. Lease of a storage tank at Port Everglades, Florida, for the storage of such gasoline.

You have asked for my opinion as to whether or not in operating under these instruments there will be any liability for either the sales tax or the storage tax upon such gasoline.

I have examined these instruments, and it is my opinion that under the arrangement as disclosed by the said instruments there is no liability for either the sales tax or the storage tax upon the gasoline involved. This is in accordance with my prior ruling of July 26, 1932, as affirmed by my ruling of February 28, 1934.

February 28, 1934.

AIRPLANES

Dear Sir:

This refers further to my letter to you under date of February 7, 1934.

After giving full and careful consideration to the arguments presented by yourself and others relative to the State gasoline storage tax, and after carefully and thoroughly considering the various decisions of our State courts, as well as decisions of the Federal Court, I have finally decided that I should not change the opinions heretofore rendered covering the application of the State gasoline storage tax on gasoline stored in this State and used by airplanes, with which opinions you are familiar and have copies in your files.

July 26, 1932.

GASOLINE—WHEN NOT SUBJECT TO SALES OR STORAGE TAX

Dear Sir:

This refers to your favor of July 15.

The facts set up, upon which you request an opinion from this office, as I understand them are as follows:

The Pan-American Airways, Inc., purchases from the Standard Oil Company of Kentucky at its refinery at Baton Rouge, Louisiana, gasoline, which gasoline is commingled with other like gasoline of the Standard Oil Company and this commingled bulk of gasoline is transported in its commingled state from Baton Rouge, Louisiana, to Jacksonville, Florida. At Jacksonville, Florida, the amount of gasoline purchased by the Pan-American Airways, Inc., will be pumped from the commingled bulk of gasoline into separate tank cars, and in such cars transported to Miami, Florida, and there pumped into tanks of the Pan-American Airways, Inc., to be used exclusively by the Pan-American

GASOLINE TAXES

Airways, Inc., in its foreign air commerce between Miami, Florida, and Latin-American countries.

The question then propounded on these facts is whether or not this gasoline so purchased by the Pan-American Airways, Inc., is subject to either the gasoline sales tax or the gasoline storage tax of the State of Florida.

Upon reviewing the authorities I find that the weight of modern authority seems to be that a sale of a definite quantity of commingled goods or property, without actual segregation at the time of sale, is, nevertheless, a definite concluded transaction.

It is my opinion that upon the facts above stated, and in the light of the various decisions of the Courts at this time, that the gasoline so handled is not subject to either the gasoline sales tax or the gasoline storage tax of the State of Florida.

April 25, 1934.

DEALERS REQUIRED TO INDICATE MANUFACTURER
OR DISTRIBUTOR

Dear Sir:

In your letter of the 23rd instant you state that a dealer in gasoline in the City of Jacksonville is selling gasoline without having any sign, card, or other explanation displayed, showing the brand, name, or trademark to which the product sold belongs.

This in my opinion is violative of Section 2 of Chapter 16083, Laws of Florida, Acts of 1933, which requires liquid fuels, lubricating oils, greases, and other similar products to be sold from the container, tank, pump, or other distributing device, manufactured or distributed by the manufacturer or distributor of the liquid fuel, lubricating oils, greases, or other similar products, and on which container, tank, pump, or other distributing device is required to be indicated the manufacturer or distributor of such product.

October 11, 1934.

DEALER REQUIRED TO PAY TAX ON ALL GASOLINE
SOLD IN FLORIDA

Dear Sir:

In your letter of the 10th instant you state that a gasoline filling station is operated on the State line between Florida and Alabama, equipped with three underground gasoline tanks, one of which is located in Florida and the other two in Alabama; that one of the tanks in Alabama has connected to it a long hose which is extended across the State line into Florida, where it serves cars with gasoline purchased by the dealer from the wholesaler in Alabama. You state that the

GASOLINE TAXES

operator of this filling station does not have a Florida license, and ask my opinion as to whether these operations come under authority of the Florida Gasoline Law.

In my opinion, the operations described make the operator a dealer in gasoline in the State of Florida, and require of him a Florida license to so operate, and in addition thereto, payment of the gallonage tax under our law.

In other words, all gasoline sold within the State of Florida is subject to the tax imposed by law, regardless of its source or the method by which it is brought into the State. In this case, the dealer would be required to pay the gallonage tax only on the gasoline sold in Florida.

September 26, 1934

APPLICATION OF LAW TO "DISTILLATE," "TRACTOR FUEL,"
"GAS-OIL" OR "MARINE FUEL"

Dear Sir:

I have your letter of the 14th inst., in which you request my opinion as to whether Petroleum products known as "Distillate," "Tractor Fuel," "Gas-Oil," and "Marine Fuel," or either of them, are subject to the terms and provisions of the Florida statutes imposing a tax upon "gasoline or other like products of petroleum." I have discussed this matter with the Honorable Nalls Berryman, Assistant State Chemist, who is in charge of the Petroleum testing for the State under the Commissioner of Agriculture, and he tells me that the products above named are not gasoline and that they are entirely dis-similar from gasoline and, that while they have some of the characteristics of kerosene, that they do not have any of the essential or primary characteristics of gasoline.

In order to be subject to the gasoline tax, these products would have to be classified as "gasoline or other like products of petroleum." To meet these requirements, such products must be gasoline or must contain some of the essential features or characteristics of gasoline.

Since neither of the above named products are gasoline nor are they, or either of them, "other like products of petroleum," it is my opinion that they are not subject to the Florida statutes imposing a tax on "gasoline or other like products of petroleum."

September 18, 1934

AUTHORITY BOARD OF COUNTY COMMISSIONERS TO USE
GASOLINE TAX MONEY UNDER KANNER BILL

Dear Sir:

I have your letter of September 13th, in which you request my opinion as to whether the Board of County Commissioners in preparing

GASOLINE TAXES

the Budget may refuse to appropriate the anticipated gasoline tax money for the payment of interest and principal on bonds issued by the County and Special Road and Bridge Districts located therein so that the gasoline tax money will be available for the purchase of bonds under the terms of Chapter 15891, Laws of Florida, Acts of 1933, known as the "Kanner Bill?"

Our Supreme Court in the recent case of *State ex rel. Florida National Bank vs. State Board of Administration*, 154 So. 876, 156 So. 15, held that money derived from the gasoline tax and allocated to a County or Special Road and Bridge District located therein, might be used to purchase bonds under the terms of the Kanner Bill "to the extent that such gasoline monies have not been appropriated as a substitute for the levy of ordinary debt service taxes to take care of the interest and sinking fund requirements of the outstanding bonds in the County."

The gasoline tax money was allocated to the Counties and the Special Road and Bridge Districts located therein for the purpose of reducing the ad valorem tax levies necessary to meet the interest and sinking fund requirements of the taxing unit. If your Board decides to use the gasoline tax money, under the terms of the Kanner Bill, the holders of the bond obligations of the taxing unit may require your Board to levy ad valorem taxes sufficient in amount to replace the gasoline tax money.

It is my opinion that your question should be answered in the affirmative.

March 14, 1934

COLLECTIBILITY OF GASOLINE TAX ON GASOLINE PURCHASED
BY STATE ROAD DEPARTMENT OR OTHER STATE BOARDS

Dear Sir:

This is in response to your inquiry of even date in which you ask whether or not the gasoline sales tax or the gasoline storage tax is collectible when such gasoline is sold to the State of Florida or a State Department such as the State Road Department.

The rule is that unless a statute expressly otherwise provides, the State itself is immune from taxes imposed by itself. This is on the theory that it simply amounts to taking money out of one pocket and putting it into another. There can be no question that the tax involved is a tax upon the State if it is included in the price of gasoline purchased by the State; and that the State Road Department is an arm of the State within this rule.

As to the one cent tax which goes to the General Revenue Fund, the payment of such by the Road Department would in effect divert the funds appropriated to the Road Department to the General Revenue Fund; and as to the second gas tax, should this be paid by funds appropriated to the State Road Department, it would amount to the

GASOLINE TAXES

use of State funds appropriated for one purpose to pay debt-service obligations on certain road and bridge bonds issued by certain counties for special road and bridge districts, which to my mind raises a very serious constitutional question.

I am therefore of the opinion that the taxes involved are not collectible on gasoline purchased by the State of Florida or its Departments, such as the State Road Department.

January 25, 1934

INSPECTION FEE COLLECTIBLE FROM FEDERAL AGENCY

Dear Sir:

This is in answer to your communication of January 24th, asking my opinion as to whether or not the one-eighth cent per gallon inspection fee imposed by Section 3965, Compiled General Laws of 1927, is collectible upon gasoline sold to such Federal agencies as the C. W. A., P. W. A., United States Forestry Service, and the United States Coastal and Geodetic Survey, and similar agencies.

It is my opinion that the one-eighth cent charge is not a tax in any sense of the word, but is solely an inspection fee, and is collectible even though the product is sold to such Federal agency.

June 22, 1933

LEGISLATURE HAS POWER TO ALLOCATE TAX

Dear Sir:

The Supreme Court has held that the Legislature has power to allocate the gas tax money or a part thereof to the several counties, and to direct how the money shall be spent by the county.

The Legislature, by the enactment of House Bill No. 304, (?) has undertaken to direct how the sum therein stated shall be disposed of, and this is binding on the Board of Administration, providing the said act is constitutional, as to which I express no opinion.

April 27, 1933

APPLICATION OF LAW IN RE: DISTRIBUTION OF TAX

Dear Sir:

I have the honor to comply with your request for an opinion as to the application of the last sentence of Section 14 of Chapter 14486, Laws of Florida, Acts of 1929, to the use of funds to the credit of the counties, derived from the second gas tax under Chapter 15659, Laws of Florida, Acts of 1931.

GASOLINE TAXES

Section 14 of Chapter 14486 requires annual budgets as to interest and sinking fund requirements of the several counties and special districts, and provides for raising funds to meet such annual requirements, and the last sentence of the Section applies only if there should be under that Act a surplus to the credit of any county for any given year.

The last sentence in Section 14 of Chapter 14486 is applicable to any surplus over and above the requirements for the budget required by Section 14, so long as the amount furnished, advanced, paid out, contributed, or expended by any county and/or special road and bridge district, or other special taxing district of such county has not been fully repaid as provided by Chapter 15659, Acts of 1931.

On the other hand, whenever the amount furnished, advanced, paid out, contributed, or expended by any county or special road and bridge district, or other special taxing district of such county, has been fully repaid, then no part of the second gas tax provided by Chapter 15659, Acts of 1931, would go back to or be expended by the county for any purpose under the provisions of Chapter 15659, Acts of 1931.

March 22, 1933

DEALER REQUIRED TO PAY TAX ON EACH BULK PLANT

Dear Sir:

In your letter of the 18th instant, you request my opinion as to whether the license tax of \$5.00 is required on each bulk plant operated by dealers in gasoline in the State of Florida.

Section 1 of Chapter 15659, Laws of Florida, Acts of 1931, requires every dealer in gasoline or other like products of petroleum in this State to pay a license tax to the State of \$5.00

Section 4 of the Act provides for the issuance by the Comptroller to the licensee dealer a receipt or certificate evidencing payment of the license fees, and requires said receipt or certificate to be posted on display, and kept at all times open to public view at the place of business for which the same is issued.

This seems to contemplate a license for the place of business. If this is correct, then it means a license for each place of business, and this in my opinion is what the law requires.

You refer in your letter to bulk plants. If this means places from which gasoline is sold and delivered, then in my opinion, each of such places is required to pay the tax of \$5.00, and have the receipt or certificate issued by the Comptroller as provided by Section 4 of the Act, posted thereat.

GASOLINE TAXES

March 21, 1933

COMPTROLLER NOT AUTHORIZED TO ENTER INTO CONTRACT
FOR COLLECTION OF TAX*Dear Sir:*

I have read and considered copy of the proposed contract between the Comptroller, on behalf of the State of Florida, and John P. Wilkinson, of the City of New Orleans, State of Louisiana, for the collection of past due gasoline taxes due the State.

In my opinion there is no authority of law for the execution of such a contract. Section 2 of Chapter 15659, Laws of Florida, Acts of 1931, provides that if any dealer shall fail to make the report and payment to the Comptroller of the number of gallons of gasoline or other like products of petroleum sold by him, for which the gasoline tax is due as in said Act provided, the Comptroller shall, after giving at least five days' notice to such dealer, estimate the amount of such products sold by such dealer from such information as he may be able to obtain, and shall add 10% to the amount of such taxes as estimated, as the penalty for the failure of such dealer to make such report and payment, and shall proceed to collect such tax, together with such penalty and cost as delinquent railroad taxes are collected by law.

In other words, the law specifically provides the method for collecting delinquent gasoline taxes, and there is no authority for contracting for the collection of such taxes, and the payment from such taxes or otherwise, for such services.

January 18, 1933

DRAINAGE DISTRICTS SUBJECT TO TAX

Dear Sir:

Responding to your request for an opinion as to whether Disston Island Drainage District is subject to the state and federal tax on gasoline, I beg to advise that gasoline sold to said district is subject to the State gallonage tax.

The State is not concerned with the federal gasoline tax, and I would respectfully suggest that you get your information on this phase of the question from another source.

In *Orange State Oil Company vs Amos*, 100 Fla., 884, 130 So. 707, it was held by the Supreme Court of the State that municipalities are not exempt under the Constitution and laws of the State from the imposition of license tax. That was a suit brought by an oil company against the Comptroller for the purpose of having the court declare gasoline sold to the City of Miami to be used by it for governmental purposes, tax-free. It was sought to enjoin the Comptroller from enforcing the payment of the tax on gasoline sold to the City of Miami.

GASOLINE TAXES

The court held that license taxes imposed by the Legislature upon municipalities is not forbidden by the Constitution.

It was further observed that the statute expressly exacts payment of the tax from the dealer. I think what was said in that case is applicable to and decisive of the question presented with relation to a drainage district. Municipalities as well as drainage districts are created primarily for governmental purposes, but are subject to the control and regulation of the Legislature.

In *City of Lakeland et al vs. Amos*, 143 So. 744, it was again held that the constitutional provisions exempting from taxes property held and used exclusively for municipal purposes relates to taxes upon property and not to license or excise taxes.

I know of no authority either constitutional or statutory for exempting gasoline sold to said drainage district from the State gallonage tax.

SECTION 7

FUTCH BILL (Chapter 16252, Acts of 1933)

August 15, 1933.

**TAXES LEVIED BY FLORIDA INLAND NAVIGATION DISTRICT NOT
PAYABLE UNDER TERMS FUTCH BILL***Dear Sir:*

This acknowledges receipt of wire from E. B. Leatherman, Clerk Circuit Court, Dade County, Florida, under date of August 14th, which reads as follows:

"On August 9th I requested information as to whether inland navigation and fire tax was payable in bond or cash. Stop. You wired I would be advised. Stop. Please let me hear immediately as I am ready to accept bonds."

You have asked us for a ruling on this matter, and we beg to reply that under the terms of the Futch Bill and the decision of the Supreme Court therein, the taxes levied by the Florida Inland Navigation District and the Fire tax levied upon all lands within the Everglades Drainage District are not such taxes as may be paid in bonds. The reason for this is that the districts do not lie wholly within a single county, and it therefore is impracticable to adjust the accounts between the county, the taxing districts lying wholly within the county, and such other taxing district lying in more than one county.

It thus becomes necessary for the Clerk to require cash for such portion of the tax sales certificate.

For your information Florida Inland Navigation District was originally incorporated by Chapter 12026, Acts of 1927, which was amended and re-enacted by Chapter 14723, Acts of 1931. The tax levied by the district upon all the taxable property within the eleven counties embraced therein, is to be collected by the tax collector in the same manner as other taxes are collected.

The fire tax is that previously required by Section 1598, Compiled General Laws of 1927, and was to be certified to the Assessors of the respective counties within the drainage district, and collected in the same manner as other taxes. This Act was repealed by Chapter 13634, Acts of 1929, Section 1; Chapter 14508, Acts of 1929, Extra Session, Section 2.

February 20, 1934.

**AUTHORITY OF CLERK UNDER FUTCH BILL TO ACCEPT BONDS
IN REDEMPTION OF LANDS FROM 1931 TAXES BEFORE
THE TAX SALE CERTIFICATE BECOMES
MORE THAN TWO YEARS OLD***Dear Sir:*

I have your letter of February 20th in which you request my opinion upon the following question:

Does the Clerk of the Circuit Court have authority to permit the re-

FUTCH BILL (Chapter 16252, Acts of 1933)

demption of lands by the use of bonds under the terms of Chapter 16252, Laws of Florida, Acts of 1933, known as the Futch Bill, from taxes levied for the year 1931, when the tax sale certificate is now owned by the State but will not become two years old until August 1st of this year?

I quote the following from the opinion of the Court in the case of *State ex rel Dowling vs. Butts*, reported in 149 So. 746:

"The tax sale certificates issued upon the sale of the lands to the state for the unpaid taxes for the year 1921 referred to in section 1 of the act do not become subject to the provisions of the act until the expiration of the two-year period of redemption from the date of the tax sale certificates issued in 1932 or thereafter for unpaid taxes assessed for the year 1931. This is so because during the two-year redemption period all tax sale certificates are subject to sale and redemption under the provisions of law which require and provide uniformity and equality in taxation. Sales and redemptions of tax sale certificates held by the state during the two-year redemption period constitute an integral part of the established uniform tax collection procedure of the state.

"A constitutional interpretation of the provisions of sections 6 and 7 of chapter 16252 requires that such provisions be limited to tax sale certificates issued for unpaid taxes assessed for the year 1931 and prior years and held by the state after the initial redemption period of two years from the date of the tax sale certificate. The requirements of uniformity and equality of taxation are that taxes be paid in money including tax collections so nomine and also receipts from sales or redemption of tax sale certificates within the initial two-year period allowed for redemption."

Based upon the authority of the above quotations, it is my opinion that Clerk of the Circuit Court does not have authority to permit the redemption of lands by the use of bonds, under the terms of the Futch Bill, from taxes levied for the year 1931, when the tax sale certificate is owned by the State but is not two years old. The 1931 taxes do not become subject to the provisions of the Futch Bill until the tax sale certificate issued for the non-payment thereof has become more than two years old. The fact that the property owner now offers to pay interest on the delinquent taxes until August 1st does not affect the conclusion reached by me.

September 26, 1933.

**ASSESSMENTS OF LANDS THAT HAVE ESCAPED TAXATION AND
THEIR RELATION TO THE FUTCH BILL**

Dear Sir:

I have your letter of September 13th, in which you ask the question: Where land escaped taxation for 1929, 1930 and 1931, and the

FUTCH BILL (Chapter 16252, Acts of 1933)

County Tax Assessor in preparing the 1932 tax roll assessed it for the years which it escaped taxation, may the owner pay the 1932 taxes in cash before the tax sale and thereby receive the benefit of the moratorium and the privilege of redeeming the land by using bonds in lieu of cash on the 1929, 1930 and 1931 taxes under the terms of Chapter 16252, Acts of 1933, (known as the Futch Bill)?

Under Section 924, Compiled General Laws of Florida, 1927, the County Assessor of taxes is authorized to assess upon the current tax roll any land that may have escaped taxation during any one or all of the past three years. The law provides: "And such assessment shall have the same force and effect as it would have had if made in the year that the same escaped taxation, *and taxes shall be levied and collected thereon in like manner* and together with taxes of the year in which the assessment is made." (Italics supplied.)

The Supreme Court has decided that the millage to be used for the years which the land escaped taxation shall be the millage as adopted and used upon the tax roll for each of said years. *Wade v. Murrhee*, Tax Collector, 78 So. 536.

It will be observed that such assessment shall have the same force and effect as it would have had if made in the year that the same escaped taxation, that the tax shall be collected in like manner and together with taxes of the year in which the assessment is made. The "manner" of collecting the "taxes of the year in which assessment is made" is by the Tax Collector receiving payment within a certain time and failing in this, to sell a tax sale certificate thereon. The purchase of the tax sale certificate could not enforce his right thereunder for a period of two years, and this period of time is known as the period of redemption. Our Supreme Court has decided that the moratorium provision of Chapter 16252, Acts of 1933, (Section 1) "has reference to tax sale certificates issued to the State upon sales for unpaid taxes for the year 1931 and prior years, *where such certificates are still held by the State and the two year period of redemption has expired.*" The Court also decided that the provision of the Act permitting the redemption of land from tax sale certificate and subsequent and omitted taxes by the use of bonds in lieu of cash (Sections 6 and 7) must "be limited to tax sale certificates issued for unpaid taxes assessed for the year 1931 and prior years and held by the State *after* the initial redemption period of two years from the date of the tax sale certificate." *State ex rel. Dowling v. Butts*, opinion filed Aug. 3, 1933.

If the taxes assessed upon the 1933 tax roll for the years 1929, 1930 and 1931 are not paid before the 1933 tax sale, the Tax Collector will issue a tax sale certificate against the land. It is my opinion that when this certificate is issued it will not be affected by Chapter 16252, Acts of 1933, because it does not meet the requirement of the law as set out in the Supreme Court decision of *State ex rel. Dowling v. Butts*, above referred to.

FUTCH BILL (Chapter 16252, Acts of 1933)

September 18, 1934.

ACCEPTANCE OF BONDS UNDER FUTCH BILL IN PAYMENT OF
TAXES DUE BROWARD COUNTY PORT DISTRICT

Dear Sir:

I have your request for an opinion upon the following question:

Does the Clerk of the Circuit Court of Broward County have authority to permit the redemption under the terms of Chapter 16,252, Laws of Florida, Acts of 1933, known as the Futch Bill, of that part of a tax sale certificate which represents the taxes due the Broward County Port District?

Bonds of a Drainage District which are to be paid by special levies of taxes according to benefits, even though the taxes are included in the State and County tax sale certificate, cannot be accepted in payment of taxes under the terms of the Futch Bill because the levies are not of taxes for governmental purpose in the ordinary meaning of the word, but are special assessments. *State ex rel Logan vs. Raulerson*, 151 So. 384.

The taxes levied for the year 1931 and prior years by the Broward County Port District are included in the tax sale certificates issued by the Tax Collector for the non-payment of State, County and District taxes. See Sections 9 and 10, Chapter 12562, Acts of 1927, and Section 4, Chapter 13940, Acts of 1929.

The question to be answered is whether the levies made by the Broward County Port District are of taxes for governmental purpose in the ordinary meaning of the word, or whether the levies are special assessments according to benefits.

The Supreme Court of Florida, discussing the nature of the Broward County Port District in the case of *Martha Bright Farms, Inc., et al vs. Broward County Port Authority, et al.*, opinion filed September 4, 1934, said:

"Chapter 12562, Acts of 1927, established the Broward County Port District, a governmental taxing unit covering territory embracing the City of Hollywood, the City of Fort Lauderdale and other areas including several towns and much unimproved and unoccupied area extending westward towards the Everglades. The governing authority of the District was the "Broward County Port Authority," a statutory corporation composed of four freeholder electors of the district. The governmental district was established by statute for the purpose of acquiring, constructing or completing, maintaining and supervising a deep water port or harbor with auxiliary powers and privileges within the district. Chapter 12562 was amended by Chapter 13940, Acts of 1929, enlarging and specifying more definitely the functions of the district. Pursuant to statutory authority the municipal port or harbor was taken over and the

FUTCH BILL (Chapter 16252, Acts of 1933)

bonds assumed by the district. See also Chapter 13940, Acts of 1929. Chapter 15107, Acts of 1931, enacted a new charter of powers conferred upon Broward County Port District with broad specific powers and obligations * * *."

The test of whether the taxes are levied for governmental purpose is whether they are levied upon all of the land in the district for the general good of *all* of the inhabitants, satisfying their needs or contributing to their convenience, and not levied according to the benefits received by particular property in the district. See *City of Tombstone vs. Marcia* (Ariz.) 245 P. 677, 679, 46 A. L. R. 828. This test has also been stated as follows: The governmental purpose "for which the government may levy taxes is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid, and must pertain to the sovereignty with which the tax originates; the essential requisite being that a public service or use shall affect the inhabitants as a community, and not merely as individuals." *Stevenson v. Port of Portland*, 162 P. 509, 511, 82 Or. 576.

The Supreme Court of Oregon has held that the construction and maintenance of a port was a governmental purpose. *Stevenson vs. Port of Portland*, *supra*. The United States Supreme Court in the case of *Milheim vs. Moffat Tunnel Improvement District* (Colo.) 262 U. S. 710, 43 Sup. Ct. R. 694, 67 L. ed. 1194, held that a tunnel constructed and operated by the district was a public improvement for the use and convenience of the entire public, and that taxes might be imposed for the construction and maintenance thereof and that such taxes would be considered as imposed for a general governmental purpose.

The creation and operation of a port and harbor, such as is authorized under the statutes creating the Broward County Port District, is an ordinary governmental purpose according to the test above set out, and levies made by the district are of taxes for governmental purposes in the ordinary meaning of the word.

It is my opinion that the Clerk of the Circuit Court of Broward County does have authority to permit the redemption under the terms of the Futch Bill of that part of a tax sale certificate which represents the taxes due the Broward County Port District.

November 22, 1934.

CHAPTER 16252, Acts OF 1933, KNOWN AS THE FUTCH BILL, DOES
NOT SUPERSEDE OR SUSPEND SECTION 7397 OR SECTION
7398, C. G. L. IN REFERENCE TO REMOVING TIMBER OR
WORKING SAME FOR TURPENTINE PURPOSES UPON
LANDS AGAINST WHICH THERE IS OUTSTANDING
A TAX SALE CERTIFICATE IN THE HANDS
OF THE STATE

Dear Sir:

This will acknowledge receipt of your letter in which you state that the owner of certain lands, upon which there are delinquent taxes levied

FUTCH BILL (Chapter 16252, Acts of 1933)

and assessed for the year 1931 and prior years, and that the tax sale certificates outstanding thereon are held by the State, has paid the taxes thereon for 1932 and subsequent years, thus bringing the lands under the provisions of Chapter 16252, Laws of Florida, Acts of 1933, known as the Futch Bill.

You request my opinion as to whether or not persons violating the provisions of Section 7397 or Section 7398, Compiled General Laws of Florida, 1927, in reference to these lands will be subject to prosecution. To state the question in another way: Do the provisions of Chapter 16252, supra, supersede or suspend Section 7397 or Section 7398, C. G. L. supra, in so far as the above referred to lands are concerned?

One of the privileges given to delinquent tax payers by the Futch Bill is the withholding by the State from sale or enforcement tax sale certificates issued for taxes levied and assessed for the year 1931 and prior years, provided the taxes on the lands are paid promptly for 1932 and subsequent years. There is no provision in the law that directly or by implication supersedes or suspends the criminal statutes (Sections 7397 and 7398, C. G. L. supra) in reference to cutting timber or working timber for turpentine purposes. It frequently happens that when the timber is removed from the lands or when it is worked for turpentine purposes, it is not worth the amount of the taxes. Sections 7397 and 7398, C. G. L. supra, were intended by the Legislature to prevent the destruction of the property upon which the State has a lien for its taxes. The Futch Bill did not intend to permit this to be done upon the lands which were to receive the benefits of the Bill.

It is my opinion that neither Section 7397 nor Section 7398, C. G. L. supra, was superseded or suspended by Chapter 16252, supra, and that any person violating either Section with reference to lands enjoying the privileges of Chapter 16252, supra, will be subject to prosecution.

November 30, 1934.

**COUPON WARRANTS NOT ACCEPTABLE IN REDEMPTION OF LAND
FROM DELINQUENT TAXES UNDER CHAPTER 16252, ACTS
OF 1933, KNOWN AS THE FUTCH BILL**

Dear Sir:

This will acknowledge receipt of your letter of November 23rd, in which you request my opinion upon the following question:

Is the Clerk of the Circuit Court of Hernando County authorized under Chapter 16252, Laws of Florida, Acts of 1933, known as the Futch Bill, to accept in lieu of cash in redemption of lands from delinquent taxes, interest bearing coupon warrants issued by the Board of Public Instruction of Hernando County under Chapter 8548, Laws of Florida, Acts of 1921?

Chapter 8548, supra, authorized the Board of Public Instruction of

FUTCH BILL (Chapter 16252, Acts of 1933)

each County in the State to issue and sell interest bearing coupon warrants in a sum sufficient to pay all outstanding indebtedness incurred for services performed by teachers, and for labor performed and material furnished in the construction of school buildings, furniture, equipment or supplies for the same, or for money loaned to the Board for educational purposes and for interest on such loans. The Act provided that the warrants and the interest thereon shall be paid out of the "County School Fund."

Section 6 of Chapter 16252, *supra*, in describing the *bonds* that may be accepted in redemption of lands from delinquent taxes reads as follows: "Bonds or matured interest coupons of all Counties or other taxing district * * *".

It is my opinion that the coupon warrants issued under Chapter 8548, *supra*, are not acceptable in the redemption of lands from delinquent taxes under Chapter 16252, *supra*, because they are not bonds of a County or other taxing district. See also the following cases: Board of Public Instruction of Lafayette County versus Union School Furnishing Company, 129 So. 824, and cases cited therein.

SECTION 8

EXEMPTIONS

August 20, 1934.

ASSESSMENT FOR TAXES OF PRIVATELY OWNED TOLL ROAD
LEASED BY THE STATE ROAD DEPARTMENT*Dear Sir:*

I have your letter in which you request my opinion upon the following questions:

(1) Is that part of the Conner's Highway in Martin County, which is privately owned and which is leased by the State Road Department, subject to taxation by the State and County?

(2) If you answer the first in the affirmative, should the road be assessed as a whole or should the part in each section be assessed separately?

Under our Constitution and Laws, all property is subject to taxation except certain property which may be exempted by law. There is no statute which exempts from taxation a privately owned toll road which is leased by the State Road Department.

We do not have a statute which gives a method for assessing a toll road, hence, it must be assessed in the same manner as other property is assessed.

It is my opinion that:

- (1) Your first question should be answered in the affirmative; and,
- (2) That part of the toll road in each section must be assessed separately and in the same manner as other property is assessed. See Section 920, Compiled General Laws of Florida, 1927.

July 7, 1934.

PROPERTY USED FOR PUBLIC WORSHIP BUT NOT OWNED BY
CHURCH ORGANIZATION NOT EXEMPT FROM TAXATION*Dear Sir:*

I have your letter of June 21st to which is attached a letter from the Honorable Paul Game, Attorney at Law, Tampa, Florida. You request my opinion upon the following questions set out in Mr. Game's letter, to-wit:

First: Whether or not a church building and the lot on which it is situated is subject to taxation where the title has been acquired by a lay organization under foreclosure of a mortgage executed by the church organization formerly owning the property, and the building being adaptable only to church purposes is vacant and unoccupied.

Second: Whether or not a church building and the lot on which it is situated is subject to taxation where the title has been acquired

EXEMPTIONS

by a lay organization under foreclosure of a mortgage executed by the church organization formerly owning the property, and the building is being rented to and used by the same or a different church organization for church purposes, as a house of public worship.

Third: Whether or not the owner of a church building and the lot on which it is situated, coming under either of the classifications set forth in questions "First" and "Second" above, who has paid taxes on such properties in order to avoid such tax becoming a cloud upon the title to the property, is entitled to a refund of the taxes paid.

It is my opinion that the property described in the "First" and "Second" questions are subject to taxation. The exemption granted by Paragraph Four of Section 897, C. G. L. applies only to such houses of public worship and the lots upon which they are situated as belong to some church organization.

Having answered the "First" and "Second" questions in the manner above set out, it follows that taxes which have been paid upon property described in the "First" and "Second" questions cannot be refunded to the taxpayer.

July 25, 1933.

**PROPERTY LEASED BY EDUCATIONAL INSTITUTION AND USED
SOLELY FOR EDUCATIONAL PURPOSES, NOT
EXEMPT FROM TAXATION**

Dear Sir:

I have your letter of July 15th, asking my opinion on the question: Is property which is leased but not owned, by an educational institution and actually occupied and used by it solely for educational purposes, exempt from taxation?

Section 897, Compiled General Laws of Florida, was enacted pursuant to Section 1 of Article IX of the State Constitution. This Section of the Statute says that property of an educational institution actually occupied and used by it solely for educational purposes shall be exempt from taxation. No provision, however, is made for exempting from taxation property of a person or corporation other than an educational institution, even though the property is leased by an educational institution and actually occupied and used by it solely for educational purposes.

Section 16 of Article XVI of the Constitution provides that property of a corporation held and used by it exclusively for educational purposes shall not be subject to taxation. This Section of the Constitution must be construed in connection with Section 1 of Article IX.

It is my opinion that property, which is leased, but not owned, by an educational institution and actually occupied and used by it solely for educational purposes, is not exempt from taxation.

EXEMPTIONS

April 28, 1933.

PREACHERS' RELIEF FUND EXEMPT

Dear Sir:

It is my opinion that Chapter 3662, Acts of 1885, creating a body corporate and politic under the name and style of "The Trustees of the Preachers' Relief Fund of the Florida Conference of the Methodist Episcopal Church South," and providing that all property and funds held by said trustees for the purpose of creating a fund for aged and worn-out preachers and their widows and orphans shall be free from taxation, in effect amounts to a contract between the State and the body corporate, and that the exemption from taxation cannot be held to be abrogated or impaired by subsequent legislation.

Therefore, it is my opinion that property held by the trustees for the purpose of creating a fund for aged and worn-out preachers and their widows and orphans should be exempt from taxation.

July 11, 1934.

MANUFACTURER OF PAPER MATCHES NOT EXEMPT UNDER
SECTION 12, ARTICLE IX OF CONSTITUTION

Dear Sir:

Replying to your favor of July 9th., I beg to advise that Section 12 of Article IX of the Constitution of the State of Florida provides for exemption from taxation to manufacturers of certain products including *paper and by-products or derivatives incident to the manufacture of any of the products named in the section.*

In construing the provisions of Section 12 of Article IX, it appears that a manufacturer of *paper matches* would not be exempt because the manufacturer thereof, if I understand your proposition correctly, would not be a manufacturer of *paper*, therefore, the *paper matches* would not be a by-product or derivative of anything in which the manufacturer would be primarily engaged. I regret that the constitutional provision is so worded that we cannot construe it so that it would be possible for the State to acquire the manufacturing plant about which you have written.

September 18, 1934.

MANUFACTURER OF RAYON YARNS EXEMPT UNDER SECTION 12
OF ARTICLE IX OF CONSTITUTION

Dear Sir:

I have your letter of September 15th in which you ask to be advised whether or not a manufacturer of "rayon yarns" who might locate in this state, would fall within the class of manufacturers exempt from taxation under Section 12 of Article IX of the Constitution of Florida.

EXEMPTIONS

In reply permit me to say that Section 12 of Article IX reads as follows:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this State on or after July 1st, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, *fabrics and textiles*, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, Glass and Crockery Manufacturers and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948.

"The exemption herein authorized shall not apply to real estate owned and used by such industrial plants except the real estate occupied as the location required to house such industrial plants and the buildings and property situated thereon, together with such lands as may be required for warehouses, storage, trackage and shipping facilities and being used for such purposes."

You will observe from the section above quoted that the manufacture of fabrics and textiles fall within the exemption. Therefore, if "rayon yarns" are generally considered by the manufacturers thereof as either fabrics or coming within the general term of textiles, it is my opinion that manufacturers of "rayon yarns" would fall within the exemption, otherwise such manufacturers would not.

July 18, 1934

**EX-SERVICE MEN NOT ENTITLED TO EXEMPTION UNLESS
DISABLED IN WAR OR BY MISFORTUNE**

Dear Sir:

I am in receipt of your letter of the 12th instant, making inquiry if an ex-service man is entitled to be exempted on real estate in the sum of \$500, unless he can show a pension certificate or a certificate from the United States Government showing that he is entitled to same.

In reply, your attention is called to Section 9 of Article IX of the State Constitution, together with Sections 897, Compiled General Laws of Florida, and Section 897 (1) of the 1934 Supplement to said compilation. The last mentioned section provides that the production by an ex-service man of a certificate of disability from the United States Government before the tax assessor, shall be prima facie evidence of the fact that he is entitled to such exemption. This Section does not say that no other evidence shall be sufficient. It is incumbent upon the tax assessor to make determination as to whether an ex-service man is en-

EXEMPTIONS

titled under the Constitution and status to the exemption provided for, and he should be furnished with affidavits as a basis for such determination, and to be kept on file in case the assessment roll is subjected to attack in the courts.

July 7, 1934

**DOWER ESTATE NOT EXEMPT FROM TAXATION. WIDOW WITH
FAMILY DEPENDENT ON HER FOR SUPPORT ENTITLED
TO \$500.00 EXEMPTION**

Dear Sir:

I have your letter of June 23, in which you request my opinion upon the following question:

Is a widow who has accepted a dower interest in her husband's estate entitled to have it exempted from taxation?

Th Constitution and statutes of the State provide that "there shall be exempt from taxation property to the value of \$500 to every widow that has a family depending upon her for support * * *". See Section 9 of Article IX of the State Constitution and Paragraph 7 of Section 897, Compiled General Laws of Florida, 1927.

If the widow referred to in your question has a family dependent upon her for support, then she is entitled to have her property up to the assessed valuation of \$500 exempted from taxation, (See Hackney versus McKenney, 151 So. 524) and this will apply to her dower interest which she received from her husband's estate. If she does not have a family dependent upon her for support, she will not be entitled to the tax exemption as above mentioned.

June 8, 1933

**EXEMPTION FROM TAXATION UNDER PROPOSED AMENDMENT
TO CONSTITUTION, SECTION 7, ARTICLE 10, NOT APPLICABLE
TO SPECIAL ASSESSMENTS FOR BENEFITS**

Dear Sir:

It is my opinion that the clause, "other than special assessments for benefits," is not a ruse or scheme to get around the general intention of the Legislature. My thought is that the proposed amendment to be known as Section 7 of Article X of the Constitution is clear and definite in its meaning. In other words, the exemption shall not apply to those improvements for which special assessment or benefits are made against the property.

This being the intent, and it seems to me rightfully so on the theory that the improvements for which the special assessments are levied, enure to the increase in the permanent value of the property.

EXEMPTIONS

December 31, 1934

OWNER OF PROPERTY WHICH IS EXEMPT FROM TAXATION MAY
CLAIM EXEMPTION BY APPLICATION TO TAX ASSESSOR
OR TAX COLLECTOR OR TO CLERK CIRCUIT
COURT, WHILE TAX SALE CERTIFICATE
IS OWNED BY THE STATE

Dear Sir:

On May 8th and July 10th A. D. 1933, I rendered opinions concerning the time at which widows and veterans as the owners of property which is exempt from taxation should make application for the exemption.

The question of when an owner of property which is exempt from taxation must make application for the exemption is now before me for consideration. An opinion on this question will cover *all* property, which, of course, will include that belonging to widows and veterans, which is exempt from taxation. I have, therefore, decided to recall the two opinions above referred to and to render an opinion covering the entire question of when application for an exemption of property from taxation should be made.

There is no limitation in the Constitution upon the time within which an exemption from taxation may be claimed by the owner of property which is exempt from taxation. It is my opinion that the owner of property which is exempt from taxation may make application for and receive the benefits of an exemption at any time by applying to the Tax Assessor and have his property marked exempt on the tax roll, or, failing in this, he may make application to the Tax Collector and have the exemption allowed, or, failing in this, he may make application to the Clerk of the Circuit Court and receive the benefit of the exemption, so long as the tax sale certificate against the property is owned by the State. The question of whether or not a particular piece of property is exempt from taxation is, of course, a question of fact. The owner of property who desires the benefit of an exemption is required to make clear and convincing proof to the proper taxing official that the property is in fact exempt. Ordinarily, it is much easier for the taxpayer to establish the fact that the property is exempt by presenting proof thereof to the Tax Assessor than it is to undertake to present the proper proof to the Tax Collector or to the Clerk of the Circuit Court.

What has been said herein applies to real and to personal property except, of course, that no tax sale certificate is issued against personal property nor is the Clerk of the Circuit Court required to collect such taxes, this being the duty of the Tax Collector.

You will please consider that this opinion supersedes the opinion of May 8th and July 10th A. D. 1933, above referred to.

EXEMPTIONS

April 10, 1934

APPLICATION OF LAW AS TO EXEMPTION FROM TAX OF BUS
USED IN TRANSPORTING PEOPLE TO AND FROM CHURCH*Dear Sir:*

This will acknowledge receipt of your letter of April 5th, in which you request my opinion as to whether or not a bus, owned and operated by your Church solely for the purpose of transporting persons to and from the Church, is exempt from a Motor Vehicle License tax.

The law requiring a license tax to be paid on motor vehicles does not exempt a bus owned and operated by a Church solely for the purpose of transporting persons to and from the Church.

The law providing for the exemption of certain Church property from taxation in Florida reads as follows:

"The following property shall be exempt from taxation: * * *

All houses of public worship and the lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property."

See Paragraph Fourth, Section 897, Compiled General Laws, 1927.

It is my opinion that the exemption statute above quoted is not broad enough to include a license tax required to be paid on the bus operated by your church.

April 19, 1934

BREWERY NOT EXEMPT FROM TAXATION UNDER SECTION 19
OF ARTICLE IX*Dear Sir:*

This refers to your favor of April fourteenth, relative to exemption from taxation of a brewery under Section 12 of Article IX of our Constitution.

I beg to advise that in my opinion a brewery does not come within the terms of exemption of said Section 12. Section 12 of the Constitution reads as follows, in so far as it effects the kind of industry that is exempt, and I think if you will read the same carefully you will agree with me that breweries do not come within the exemption of this section:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this

EXEMPTIONS

State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, glass and crockery manufacturers and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948. * * *

November 13, 1934

**TAX LIEN ON PROPERTY FOR 1931, WHICH PROPERTY WAS
EXEMPT IN 1932 AND SUBSEQUENT YEARS**

Dear Sir:

This will acknowledge receipt of your letter of November 6th, in which you request my opinion as to the following question: "Whether or not property in Florida is protected against the sale and application for Tax Deed upon Certificates for 1931 and prior years where the property is exempt for 1932 and subsequent years."

Under the laws of Florida "all taxes imposed pursuant to the Constitution and laws of this State shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment * * *." Section 894, Compiled General Laws of Florida, 1927. The fact that the property against which there is outstanding a tax sale certificate may for later years be exempt from taxation, does not, in any way, affect the lien for taxes, and laws relating to its enforcement, which accrued thereon prior to the time the land became exempt.

It is my opinion that your question should be answered in the negative.

November 1, 1934.

MEMBERS OF NAVAL MILITIA NOT EXEMPT

Dear Sir:

I am in receipt of your letter of the 30th ultimo, enclosing communication from Hon. Vivian Collins, Adjutant General, making inquiry if members of the Naval Militia are exempt from the payment of poll taxes for participation in the next General Election.

In reply your attention is called to Section 248, Compiled General Laws of Florida, 1927, requiring the payment of poll taxes in order to be able to vote in General Elections.

EXEMPTIONS

Your attention is further called to Section 2015 of the same compilation which provides that the State Militia shall be divided into four classes: The National Guard, the Naval Militia, Marine Corps and unorganized militia. Your attention is further called to Section 2070 which provides every officer and enlisted man of the Florida National Guard shall be exempt from poll tax.

You will note that all persons are required to pay poll taxes unless exempt by statute. You will note further that of the four classes of State Militia the statutes only exempt officers and enlisted men of the National Guard.

In my opinion members of the Naval Militia are not under our present statutes exempt from the payment of poll taxes.

November 23, 1934.

**LANDS—NOT EXEMPT FROM TAXATION BECAUSE EASEMENTS
GRANTED TO FLORIDA INLAND NAVIGATION DISTRICT**

Dear Sir:

I have your letters to which is attached several letters from Honorable Gilbert A. Youngberg. You request my opinion as to whether or not land will be exempt from taxes if the owner grants an easement therein to the Florida Inland Navigation District for the purpose of permitting the deposit on the land of material that may, at any time, be dredged in connection with the maintenance of the Intracoastal Waterway from Jacksonville to Miami.

I have been unable to locate any statute which exempts land from taxation under the circumstances outlined. Chapter 15751, Laws of Florida, Acts of 1931, purports to cancel all taxes and tax sale certificates and tax deeds owned by the State of Florida when the title or easement of land passes to the United States of America for canal purposes to be used in connection with the Intracoastal Waterway above referred to. The Florida Inland Navigation District was organized for the purpose of complying with the conditions set forth by the Congress before the Federal Government would construct and maintain the Intracoastal Waterway. There is nothing in this Act (Chapter 14,723, Laws of Florida, Acts of 1931) exempting property from taxation.

November 7, 1934.

HOMESTEAD EXEMPTION AMENDMENT

Dear Sir:

Answering your inquiry, I beg to say that under the adoption of the Homestead Exemption Amendment, Section 7, Article X, of the State Constitution, it is my opinion that the same is effective with reference to taxes levied and assessed thereafter. This in effect means that taxes

EXEMPTIONS

for the year 1935 will not attach to homesteads up to the valuation of \$5,000.00. All taxes for the year 1934 and prior years levied and assessed against homesteads prior to the effective date of said amendment, even though they have not yet been paid, in my opinion, constitute a continuing tax charge against homesteads on which levied and assessed until paid.

October 11, 1934.

EXEMPTION OF CEMETERY PROPERTY OWNED AND OPERATED
BY NON-PROFIT CORPORATION

Dear Sir:

I have your letter of October 8th, in which you state the following:

At a recent meeting of representatives from a score or more of churches and fraternal and civic organizations of your community, it was decided to request my opinion upon the question of whether or not your local cemetery is subject to State and County taxes. You state that the property is owned by a corporation, not for profit, which was formed under the Florida statutes and that the affairs of the corporation are managed by its directors. You also state that lots and grave spaces are sold and certain fees charged for opening graves and other services rendered in connection therewith, but that all monies so received are devoted to the upkeep of the cemetery and to the payment of its mortgage indebtedness, and that the officers of the corporation serve without compensation and there is no profit for anyone whatsoever.

Section 1 of Article IX of the State Constitution requires the Legislature to provide for a uniform and equal rate of taxation and to prescribe such regulations as shall secure a just valuation of all property, both real and personal, "excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes."

Pursuant to the above mentioned section of the Constitution, the Legislature has exempted from taxation:

"All houses of public worship and the lots on which they are situated, and all pews or steps and furniture therein, every parsonage and *all burying grounds not owned or held by individuals or corporations for speculative purpose, tombs and right of burial*; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property." (Italics supplied.)

See Section 897, Compiled General Laws of Florida, 1927, Paragraph Fourth.

The Supreme Court of Tennessee in the case of Forest Hills Cemetery Company versus Creath, et al., 157 S. W. 412, decided that under

EXEMPTIONS

a constitutional provision similar to ours the property of a cemetery company is held for a *charitable* purpose within the meaning of the Constitution. I do not express an opinion as to whether or not the word "charitable" in the Constitutional provision above referred to is broad enough to cover the property of a cemetery company.

It is my opinion that the property of your cemetery corporation is not exempt from taxation because the corporation which owns the property is free at will to throw off or terminate the responsibilities of the charity (if any) and this right on the part of the corporation removes it from the exemption of "all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs and right of burial" as set forth in Paragraph Fourth of Section 597, *supra*. (See Sections 6495 through 6508, Compiled General Laws, as to the organization, powers, duties and dissolution of corporations not for profit).

September 14, 1934.

SMALL LOAN COMPANY NOT EXEMPT FROM TAX UNDER
CHAPTER 14677 AND CHAPTER 15726, ACTS 1931

Dear Sir:

Answering your letter of the 11th inst., I beg to say in my opinion Section 6 of Chapter 14677, Laws of Florida, Acts of 1931, as amended by Chapter 15726, Acts of 1931, does not exempt corporations doing a business as small loan companies from the tax required under said Chapter 14677.

There is an exemption to "Building and Loan Associations" but no exemption to small loan companies organized under Chapter 10177, Acts of 1925.

February 8, 1933.

SUGAR MANUFACTURING PLANT ENTITLED TO EXEMPTION FROM
TAXES UNDER SECTION 12 OF ARTICLE IX OF
STATE CONSTITUTION

Dear Sir:

Replying to yours of the 3rd instant, in which you ask to be advised whether a sugar manufacturing plant located in your county is entitled to exemption from taxation under Section 12 of Article IX of the Constitution of the State of Florida, permit me to say the Constitutional amendment referred to provides that for a period of fifteen years from the beginning of operation of industrial plants which shall be established in this State on or after July 1st, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and

EXEMPTIONS

textiles, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, glass and crockery manufacturers, and the refining of sugar and oils, and by-products and derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948.

"The exemption herein authorized shall not apply to real estate owned and used by such industrial plants, except the real estate occupied as the location required to house such industrial plants, and the buildings and property situated thereon, together with such lands as may be required for warehouses, storage, trackage, and shipping facilities, and being used for such purposes."

June 19, 1933.

**TURPENTINE AND ROSIN DISTILLERS, EXEMPT FROM LICENSE
TAX OF SECTION 1141, WHEN PRODUCT PURCHASED AND
OFFERED FOR SALE BY DISTILLERS BY
CHAPTER 16297, ACTS 1933**

Dear Sir:

Replying to your letter of June 15th, permit me to say Section 2 of Chapter 13874, Acts of 1929, reads as follows:

"That all persons and corporations offering for sale farm or grove products grown in the State of Florida and products manufactured therefrom, shall be exempt from all forms of license tax, State, county and municipal, when the same is being offered for sale or sold by the person or corporation producing the said products."

Senate Bill 173, Chapter 16297, Acts of 1933, reads as follows:

"Section 1. That 'crude turpentine gum' (oleo-resin) the product of a living tree, or trees, of the pine species, and 'gum-spirits of turpentine' and 'gum rosin' as processed therefrom, are hereby classified and declared to be 'agricultural commodities,' 'agricultural products' and 'farm products.'"

In view of these provisions of the law it appears that it was the intention of the Legislature to exempt distillers of turpentine, when such turpentine is produced and offered for sale by the distiller himself. Therefore, I suppose it is necessary to hold that the license tax heretofore required by Section 1141, Compiled General Laws, cannot be imposed upon distillers and manufacturers of spirits of turpentine and rosin.

EXEMPTIONS

November 7, 1933.

RESIDENT ENTITLED TO \$500 EXEMPTION FROM ASSESSED
VALUE OF PERSONAL PROPERTY*Dear Sir:*

This will reply to your letter of November 4th, inquiring as to property tax exemption law in this State.

You state that you are a citizen of Great Britain, but for ten years have been a resident of the State of Florida, owning a home in the City of DeLand and having resided there for several years; that you are a former British soldier and lost one leg in action in France, and you wish to be advised whether under the provisions of Section 9 of Article IX of the Constitution of Florida you are entitled to tax exemption of \$500 on real estate.

From the above facts it appears you are undoubtedly a bona fide resident of this State. Section 9 of Article IX of the Constitution of Florida reads as follows:

"There shall be exempt from taxation property to the value of \$500 to every widow that has a family dependent upon her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

In view of the constitutional provisions quoted above, it appears to me that you are entitled to a property tax exemption in the amount of \$500.

May 26, 1933.

WIDOW ENTITLED TO CERTAIN TAX EXEMPTION AS
HEAD OF FAMILY*Dear Sir:*

This refers to your favor of May 26th, in which you request my opinion as to whether or not a widow who has a sister dependent upon her for support is entitled to the exemption of \$500.00, provided for in Section 897, Compiled General Laws, of 1927.

My predecessor in office, Justice Fred H. Davis, rendered an opinion under date of November 26, 1930, in which he uses the following language:

"You will notice that the law requires that the widow who obtains the tax exemption must have a family dependent upon her for support. This does not necessarily mean that she must be supporting minor children, but must mean that she is the head of the family, and is responsible for the support of whoever constitutes the family which is dependent on her. For example, one sister living with another sister who is an invalid might be deemed the head of a family supporting the invalid sister."

EXEMPTIONS

I confirm the above opinion and would further state that it is my opinion that a widow who maintains a household composed of parents, children or other relatives, where the widow is the head of the household, and the others living with her are dependent upon her and constitute a part of the family making up the household, that such widow under such circumstances, is entitled to the exemption provided for in Section 897, Compiled General Laws of 1927.

August 20, 1934.

**WIDOWS EXEMPTION OF PROPERTY TO THE VALUE OF \$500.00
APPLICABLE ONLY WHEN SHE HAS A FAMILY DEPENDENT
ON HER FOR SUPPORT AND WHEN SHE HAS LEGAL
TITLE TO PROPERTY**

Dear Sir:

I have your letter in which you recite the following facts:

"A widow with dependent child, several years ago sold a piece of property, received only a very small cash payment and accepted a mortgage, but shortly thereafter the holder of the legal title surrendered the property to her in settlement of her mortgage and she took possession of same. However, due to certain entanglements, she was unable to obtain the actual title thereto until 1930 and, because of this trouble over the title, failed to claim her exemption for the years 1929 and 1930, although she claims she was entitled thereto."

You request my opinion upon the foregoing facts as to whether the widow mentioned therein is entitled to the exemption claimed.

Section 9 of Article IX of the State Constitution reads as follows:

"There shall be exempt from taxation property to the value of \$500.00 to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune." Section 897, Compiled General Laws of Florida, 1927, follows the quoted section of the Constitution in describing what property belonging to a widow shall be exempt from taxation.

Our Supreme Court in the case of *Rast, Tax Collector of Duval County versus Hulvey*, 77 Fla. 74, 80 So. 750, adopted a strict rule of construction in reference to laws exemption property from taxation. In that case, the Court said:

"Under the law all real and personal property in the state, not expressly exempted therefrom, is subject to taxation, and all laws exempting property from taxation should receive a strict construction, and no property should be held to be within the terms of the statute granting immunity from taxation."

Under the strict rule of construction which is enforced in this State, it is my opinion that the widow described above is not entitled

EXEMPTIONS

to have her property exempted from taxation for the years 1929 and 1930 because she did not have the legal title thereto during that time. I express no opinion as to her rights during any years except the years 1929 and 1930.

May 16, 1933.

**WIDOWS OF WAR VETERANS NOT EXEMPT FROM PAYMENT OF
OCCUPATIONAL LICENSE TAX**

Dear Sir:

Replying to your favor of May 15th., permit me to say that Chapter 13876, Acts of 1929, does not provide an exemption from the payment of occupational license tax to widows of war veterans.

SECTION 9

DELINQUENT TAXES

August 21, 1933.

PAYMENT OF COUNTY AND DISTRICT TAXES IN INDIAN RIVER
COUNTY WITH BONDS UNDER CHAPTER 16482, ACTS
OF 1933 LEGISLATURE*Dear Sir:*

I have before me your memorandum and the letter of Messrs. Vocelle & Mitchell, in which it is stated that the Florida East Coast Railway desires to pay the 1932 county and district taxes levied against their property in Indian River County, with bonds under Chapter 16482, Acts of the 1933 Legislature.

You request my opinion as to whether the above mentioned law was repealed by the Futch Bill, and whether the county commissioners are authorized to make the settlement above mentioned.

Chapter 16482, Acts of the 1933 Legislature, purports to authorize the Board of County Commissioners of Indian River County and the governing board or other constituted authority of all other taxing districts having power to levy taxes upon property located in the county to provide by resolution for the acceptance of bonds, interest coupons or other obligations of the county in:

1. The redemption of lands from tax sale certificates or unpaid taxes;

2. The payment in part or in full of taxes levied for the year 1932 and subsequent years.

The Futch Bill (Chapter 16252, Acts of the 1933 Legislature) being a general revision of the whole subject of the redemption of lands from tax sale certificates which were issued pursuant to State, county and district taxes levied for the year 1931 and prior years, when the certificate is more than two years old and is owned by the State, does in my opinion repeal that part of Chapter 16482, Acts of the 1933 Legislature, which allows the redemption of lands sold for taxes levied in the year 1931 and prior years when the certificate is more than two years old and is owned by the State.

See the case of *Stewart vs. DeLand-Lake Helen Special Road and Bridge District*, 71 Fla. 158, 71 So. 42.

In my opinion the Futch Bill does not repeal Chapter 16482, Acts of the 1933 Legislature, in so far as State, County and district taxes levied for the year 1932 are concerned.

Sections 6 and 7 of the Futch Bill provide for the use of bonds and matured interest coupons from bonds, of the county or of a taxing district in the county where the land to be redeemed is located, in the redemption of lands from delinquent taxes levied for the county and district. The Court in its opinion on the Futch Bill, being the case of *State ex rel Dowling vs. Butts as Clerk, etc.*, said:

DELINQUENT TAXES

"A constitutional interpretation of the provisions of Sections 6 and 7 of Chapter 16252, requires that such provisions be limited to tax sale certificates issued for unpaid taxes assessed for the year 1931 and prior years and held by the State *after* the initial redemption period of two years from the date of the tax sale certificate. The requirements of uniformity and equality of taxation are that taxes be paid in money including tax collections *eo nomine* and also receipts from sales or redemption of tax sale certificates within the initial two year period allowed for redemptions."

In my opinion Chapter 16482, Acts of the 1933 Legislature, is in conflict with Section 1 of Article IX of the State Constitution, in so far as it provides for payment of 1932 and subsequent years' State, county and district taxes with bonds or interest coupons of the county or district where the land upon which the taxes are to be paid is located.

In my opinion the county commissioners of Indian River County are not authorized to accept bonds in settlement of the 1932 taxes levied for county and district purposes.

October 7, 1933.

PROHIBITING THE MOVING OF BUILDINGS FROM PROPERTY
UPON WHICH THERE IS OUTSTANDING A TAX SALE
CERTIFICATE IN THE NAME OF THE STATE

Dear Sir:

I have your letter of September 25, 1933, in which you request my opinion as to whether or not a person may be restrained from moving a building off of property upon which there is outstanding a tax sale certificate in the hands of the State.

The tax sale certificate represents a lien against the property. If the moving of the building from the property will destroy the value of the lien, then, I think, a suit to enjoin the moving of the house could be maintained in the Courts. I suggest that you give the following citations to the Attorney for the Board of County Commissioners. These authorities will be helpful to him in investigating this matter, to-wit:

45 So. 923; 66 So. 657; 14 R. C. L. 377; 32 C. J. 313 bond.
12 Fla. 26 lien; 104 N. W. 875; 18 N. E. 720; 23 L R A (N S) 691.
Key No. Taxation 514½.

September 18, 1933.

CUTTING AND REMOVING STUMPS BY APPLYING PURCHASE
PRICE THEREOF TO DELINQUENT TAXES NOT AUTHORIZED

Dear Sir:

In response to your communication of September 14, I beg to advise that under Sections 7397 and 7398, Compiled General Laws of 1927, I

DELINQUENT TAXES

know of no means whereby an arrangement could be worked out providing for the payment for the privilege of cutting and removing stumps, such payment to be applied upon delinquent taxes.

**TAX COLLECTOR NOT IN CONTEMPT OF COURT BY ADVERTISING
AND SELLING CERTIFICATE COVERING RAILROAD LANDS
IN HANDS OF RECEIVER**

I am in receipt of your letter of the 17th inst., in which you recite that the Seaboard Air Line Railroad owns certain properties in certain counties which are not used for railroad purposes; that these properties are assessed by the local Tax Assessors and appear on the tax roll like all other real estate properties in the various counties; that the Tax Collectors are making up their sales and are preparing to advertise these lands along with other delinquent lands; that the Seaboard Receivers are contending that since the railroad is in receivership the Tax Collectors will be guilty of contempt of the Federal Court if they advertise these lands; that the Tax Collectors have asked your office whether or not they should advertise these lands; that you will be pleased to have me advise you.

Your attention is called to the following statutes and authorities which will be of interest in the premises:

"Whenever in any cause pending in any Court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

28 U. S. C. A. 124.

"The president, secretary, superintendent, manager or agent of any railroad company, or receiver of any railroad, owning lands or any other real estate in any county of this State shall make out and deliver to the County Assessor of taxes on or before the first Monday in March in each year, of each County where the property is situated, a full and complete list of all lands or lots owned or held by them, the same as the property of individuals, and should any railroad company fail to return their real property as required by this Act the County Assessor of taxes shall ascertain and assess the same as in cases of individual property."

Sec. 968, C. G. L. of Fla., 1927.

"All taxes imposed pursuant to the Constitution and laws of this State shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment, and no act of omission or commission on the part of

DELINQUENT TAXES

any tax assessors, or any assistant tax assessor, or any tax collector, or any Board of County Commissioners, or any Clerk of the Circuit Court or any other officer of this State, or any newspaper in which any advertisement of sale may be published, shall operate to defeat the payment of said taxes."

Sec. 894, C. G. L. of Fla., 1927 (1934 Supplement).

"All real and personal property shall be subject to taxation on the first day of January of each year, and this Chapter shall create a lien upon such property for the purposes thereof superior to all others."

Sec. 896, C. G. L. of Fla., 1927.

"The statute gives the State a lien upon land for taxes duly assessed thereon. Such lien is evidenced by tax sale certificates issued at the sale for non-payment of taxes."

Ridgeway v. Peacock, 100 Fla. 1297, 131 So. 140.

"The general doctrine that property in the possession of a receiver appointed by a court is in custodia legis, and that unauthorized interference with such possession is punishable as a contempt, is conceded; but it is contended that this salutary rule has no application to the collection of taxes. Undoubtedly property so situated is not thereby rendered exempt from the imposition of taxes by the government within whose jurisdiction the property is, and the lien for taxes is superior to all other liens whatsoever, except judicial costs, when the property is rightfully in the custody of the law, but this *does not justify a physical invasion* of such custody and a wanton disregard of the orders of the court in respect of it. The maintenance of the system of checks and balances characteristic of republican institutions requires the co-ordinate departments of government, whether Federal or state, to refrain from any infringement of the independence of each other, *and the possession of property by the judicial department cannot be arbitrarily encroached upon, save in violation of this fundamental principle.*" (Italics supplied.) Matter of M. V. Tyler, U. S. 164, 37 L. Ed. 689.

The test of whether the acts of a Tax Collector will cause him to be in contempt of Court is as follows:

Will his acts interfere with the possession of the Court as exercised through its receiver?

The sale of the property and the issuing of a tax sale certificate by the Tax Collector is simply a ministerial act in the ordinary process of the collection of delinquent taxes. The tax sale certificate is nothing more than the evidence of the lien given by law for the non-payment of the taxes due the State. The acts of the Tax Collector in the sale of the property and the issuing of the tax sale certificate do not transfer or convey the right of possession or the title to the property.

DELINQUENT TAXES

In view of the above, it is my opinion that the Tax Collectors will not be in contempt of Court by virtue of advertising and selling at regular tax sales lands assessed for taxes by the County Tax Assessors belonging to a railroad company, which is in the hands of a receiver appointed by a Federal Court.

November 24, 1933

EVERGLADES DRAINAGE DISTRICT—TAX CERTIFICATES;
REDEMPTION

Dear Sir:

Following your communication of October 24th, with reference to the matter of redeeming lands sold for the non-payment of taxes assessed in the Everglades Drainage District, I advised your office that due to certain pending litigation it was inadvisable for this office to make any rulings in regard to the question involved.

The Supreme Court, in its opinion in the case of State ex rel Board of Commissioners of Everglades Drainage District vs Sholtz et al as and constituting the Trustees of the Internal Improvement Fund of the State of Florida, which opinion was rendered on November 16, 1933, has determined the status of the certificates representing these taxes, as well as the relationship between the Trustees and the Board.

As to those certificates which are held by the Trustees of the Internal Improvement Fund, the same may be "redeemed," in effect, by a transaction with the Trustees which takes the form of a sale and conveyance of the lands pursuant to the provisions of sub-paragraph (e) of Section 65 of Chapter 14717, Acts of 1931. Any person whose lands are affected by a certificate now held by the Trustees of the Internal Improvement Fund may receive full information concerning this matter and complete the transaction through the office of the Trustees in Tallahassee.

As to those certificates which are now held by the Board of Commissioners of Everglades Drainage District, which we understand constitute the bulk of the outstanding certificates, we advise as follows:

We are informed by counsel representing the Board of Commissioners of Everglades Drainage District that on Tuesday, November 21, proper resolutions were enacted pursuant to the provisions of Chapter 16288, Acts of 1933, extending the time for the redemption of drainage taxes levied for the year 1931 and prior years, represented by tax certificates held by said Board; and that such information has gone out to the Clerks of the Circuit Court in the counties involved, which should have been received by them today. Such resolutions, as we are informed, by extending the time for redemption in effect, provide for redemption through the clerk of the circuit court in the particular county involved. Thus the owners of such land affected by these certificates now have the machinery through which the same may be redeemed.

DELINQUENT TAXES

We trust that this answers your inquiry, and that it will now help to alleviate this troublesome situation. We assure you of our willingness to cooperate to the fullest extent in assisting further to the end that the individuals concerned may be able to procure the maximum benefit from these Federal loans.

June 8, 1934

RESTRAINING THE REMOVAL OF BUILDINGS FROM LANDS UPON
WHICH TAXES ARE DELINQUENT

Dear Sir:

I have your communication in which the following facts appear:

The State and County taxes have not been paid on certain lands of the Florida Manufacturing Company of Madison, Florida, since 1931, and in 1932 a tax sale certificate was issued to, and is now being held by, the State. The brick buildings located thereon are now being removed and when the removal is completed, the lands will not be worth the amount of the delinquent taxes. You request my opinion as to whether an injunction will lie to restrain the removal of the buildings.

If the removal of the buildings will reduce the value of the lands to a point where the lands will not be worth the amount of the delinquent taxes, it is my opinion that the Court will grant an injunction restraining the removal thereof. A suit of this kind should be brought in the name of the State of Florida for the use and benefit of the State of Florida and the County interested. If the Board of County Commissioners decide to authorize their Attorney to bring the suit on behalf of the County, I will be glad to co-operate to the end that the interest of the State and the County be properly protected.

January 7, 1933

TAX REDEMPTION MONEY—NOT AUTHORIZED TO CLEAR TAX
REDEMPTION FUND WITH STATE TREASURER

Dear Sir:

This refers to your favor of January 7th, in which you state that it is your desire to clear all remittances coming to the office of State Comptroller directly with the State Treasurer, including the delinquent tax redemption funds, and you request my opinion as to whether this can be legally done.

I beg to advise that Section 24 of Article IV of the Constitution is as follows:

"Section 24. The Treasurer shall receive and keep all funds, bonds and other securities in such manner as *may be prescribed by law*, and shall disburse no funds nor issue bonds or other securities except upon the order of the Comptroller, countersigned by the Governor, in such manner as shall be prescribed by law."

DELINQUENT TAXES

The statute with reference to tax redemptions provides that it shall be the duty of the Clerk of the Circuit Court to make reports to you within the first ten days of each month, and oftener if required, and that with such report the Clerk "shall remit the amounts with his report." The statute then further provides that the Comptroller shall remit to the proper officer the amounts due the State, county and sub-districts respectively and shall receive receipts for the same in due course.

It seems to me that this section of the statute clearly contemplates that you shall handle the moneys and be responsible for them from the time they are remitted to you until you shall remit to the proper officer. The statute does not provide that this money shall go into the State Treasury, and it is my opinion, under the present law you will be unable to clear such money through the State Treasurer.

January 31, 1934

REDEMPTION OF LANDS FROM PART OF TAXES REPRESENTED IN
A TAX SALE CERTIFICATE

Dear Sir:

I have your letter of January 30th in which you request my opinion upon the following question:

"Can a taxpayer, owning property in a drainage district, pay the State and county taxes without at the same time paying the drainage tax or assessment when all such taxes are covered in the same certificate?"

The Statutes dealing with the redemption of lands from tax sale certificates seem to contemplate the redemption of the lands from the entire lien against the same. See Sections 984, 985, and 994, Compiled General Laws of Florida, 1932 Supplement, and Chapter 16252, Laws of Florida, Acts of 1933, (known as the Futch Bill) and Chapter 16090, Laws of Florida, Acts of 1933, (Okeechobee Flood Control).

It is my opinion that if the person entitled to redeem the lands wishes to redeem the same from the entire lien represented by the tax sale certificate and subsequent and omitted taxes, he may do so. There is no authority under the Statutes above cited which permits him to redeem from State and County taxes and not redeem from drainage taxes or assessments when all such taxes are included in the tax sale certificate.

October 13, 1933

TAX SALE CERTIFICATES REDEEMABLE UPON BASIS LAST
ASSESSED VALUATION

Dear Sir:

Answering your communication of October 12 with reference to prior opinions of this office as to the effect of Section 997, C. G. L.,

DELINQUENT TAXES

1927, I quote from such opinions under date of February 4, 1928 and February 28, 1928, respectively:

"I have your letter of January 14th, inquiring whether or not any official opinions have been rendered by the Attorney General upon Chapter 7806, Acts of 1919, relating to the redemption of tax certificates held by the State of Florida.

"Careful search of the archives of the office fails to reveal any opinion which touches upon the matter you inquire about in the second paragraph of your letter. I find, however, that the law has been construed by the Comptroller's office for some time and apparently its construction has been accepted as carrying out the meaning and intent of this statute.

"The construction placed upon the statute by the Comptroller is that the statute was passed to promote the redemption of tax certificates held by the State. In order to encourage the redemption of such tax certificates the statute provides that where a tax certificate has been issued based upon a certain valuation and subsequent to the assessment upon which the tax certificate was based the value of the land is reduced, the person redeeming shall have the benefit of the last assessed valuation placed upon the land by the tax assessor so as to entitle him to redeem any outstanding tax certificates held by the State upon the basis of the last assessed valuation which appears.

"For example, land may have been assessed at \$3,000 and tax certificate issued upon the land for the unpaid taxes for a particular year. The next year the tax assessor may have reduced the valuation of the same land to \$2,000. In such a case the \$3,000 tax certificate may be redeemed by the payment of taxes mentioned in the certificate figured on a \$2,000 valuation.

"The proper construction of my letter on the subject means that the face of the tax certificate can be reduced to the equivalent of an assessment based on the current valuation of the property. For example, if a certificate is sold for \$200 at public auction based on a \$200 valuation, and the same is bid in by the State and before the certificate is redeemed the tax assessor assesses the following year's tax on a \$100.00 basis, the face of the certificate, viz., \$200, can be cut to \$100 when the same is redeemed by taking the certificate up.

"Credit should be taken with the State Comptroller for the difference between the amount of the certificate charged to the clerk and the amount accepted in redemption of the same.

"The purpose of the statute was to encourage the redemption of tax certificates held by the State by allowing them to be redeemed at less than their face value under certain conditions. Of course, you understand that the rule in question has no application to tax certificates held by private parties

DELINQUENT TAXES

as these can only be redeemed by the payment of their face value.

"Such was the construction originally put upon the law by former Attorney General Van C. Swearingen in an opinion rendered March 23, 1920."

June 2, 1934.

VALIDITY OF 1891 TAX SALE

Dear Sir:

I am in receipt of your letter of the 5th instant, enclosing communication from Hon. C. M. Gay, Clerk Circuit Court of Orange County, in which Mr. Gay stated he had been informed there is an old Supreme Court ruling declaring the tax sale of 1891 for the taxes of 1890 to be illegal, and making inquiry as to the status of the holder of an individual certificate of said sale.

In reply your attention is called to the decision of our Supreme Court in the case of Hull, Clerk, vs. Greeley, 31 Fla. 471, 12 So. 469, which was a case brought up from the Circuit Court of Duval County. The headnote to said case reads as follows:

"The authority of tax collectors to sell lands for unpaid taxes was abrogated by the general revenue law of 1891, (Chapter 4010,) and the act providing for certifying to the comptroller lands upon which taxes have not been paid, (chapter 4011;) and consequently a sale of land for unpaid taxes of 1890 by a tax collector in the year 1891, after such statutes took effect is illegal. They took effect August 4, 1891, the legislature having adjourned finally on the 5th day of the preceding June."

This ruling, as you will note, applies to tax sales in all counties subsequent to August 4, 1891, the effective date of the 1891 statutes mentioned.

By reference to the body of said opinion you will note that the tax certificate involved in said case was an individual tax certificate.

Replying specifically to your inquiry, I beg to say if the tax sale of 1891 for Orange County was subsequent to August 4, 1891, all certificates of such sale, whether to the State or to an individual, are invalid under the ruling of our Supreme Court in the above mentioned case of Hull, Clerk, vs. Greeley.

April 3, 1934.

PAYMENT OF ADVERTISING COST REQUIRED OF TAXPAYER
UPON DELIVERY OF DESCRIPTION TO NEWSPAPER
BY TAX COLLECTOR

Dear Sir:

There appears to be some misunderstanding as to when the cost of advertising accrues against lands upon which the taxes became de-

DELINQUENT TAXES

linquent on April 1, A. D. 1934. The tax sale for 1934 will take place in each County on the first Monday in June. It has been reported through the press that the Tax Collectors may accept payment of taxes during April without the taxpayer being required to pay a *penalty*, and that during May these taxes may be paid to the Tax Collector but the cost of advertising the description of the property will be added to the amount of the taxes.

The word *penalty* as used in the report has reference to *interest* charged by the State and does not include the *cost* of advertising the description of the property.

In publishing the delinquent tax list, it will be necessary for the newspaper to set the type for the list in advance of the day when publication begins. The newspaper may lawfully charge the legal rate of publication for setting the type and otherwise preparing for the publication of the list.

It is my opinion that the taxes, upon lands, which became delinquent on April 1st of this year, may be paid at any time prior to the tax sale without the taxpayer being required to pay any *penalty* by way of interest charged by the State. If the taxes are paid between the 1st of April and the date of the tax sale, the taxpayer will be required to pay all *cost* of advertising the description of the property that accrues during this period. This cost will accrue and will be chargeable to the taxpayer from and after the day the description of the property is delivered by the Tax Collector to the newspaper.

September 20, 1933.

REDEMPTION OF UNDIVIDED INTEREST IN LAND FROM
TAX SALE CERTIFICATE

Dear Sir:

I have your letter of September 15th, in which you ask my opinion on the question:

May a person who owns an undivided interest in land, upon which there is outstanding a tax sale certificate in the hands of an individual, redeem his undivided interest in the land so as to protect his interest against the holder of the tax sale certificate?

The lien of the tax sale certificate is against all of the land described therein. The law permits a person entitled to redeem, to redeem the land described in the certificate, or a part or parcel thereof, by paying the face of the certificate or "such portion thereof as the part or interest redeemed shall bear to the whole." See Section 985, Compiled General Laws of Florida, 1932 Supplement. This Section also provides that "if only a portion thereof shall be redeemed, such portion and description of land with date of redemption, shall be endorsed on such certificate by the Clerk and the certificate retained by the owner subject to such endorsement."

DELINQUENT TAXES

It is my opinion that this Section of the statute is authority for redemption, by a person entitled to redeem, of a part of the land described in a tax sale certificate, but it does not authorize the redemption of an undivided interest in the land from the tax sale certificate.

See Opinion of Attorney General, page 497 of Biennial Report, 1931-1932.

November 23, 1933.

AGAINST PUBLIC POLICY, PUBLIC OFFICERS SPECULATING

Dear Sir:

I acknowledge receipt of your letter of the 21st instant, requesting my opinion as to the legality of your proposed dealing in delinquent taxes and tax certificates as a stockholder in a corporation for that purpose.

I know of no statute specifically prohibiting such transactions, but I am frankly of the opinion that it would be against public policy for you to do so. This might be said to be a legislatively established public policy by reason of the statutes prohibiting county officers from directly or indirectly in any manner speculating in jurors' or witnesses' certificates, or in any warrants drawn upon the county treasury for the payment of money out of any public funds of the State on any county, and prohibiting them from purchasing supplies or materials for public use from themselves or from any firm or corporation in which such officer is interested, and forbidding such officers from bidding on public works.

In other words, it might be said to be the legislatively established public policy that public officers shall not speculate in any matters or transactions in any way connected with their official duties.

July 18, 1933.

TAX SALE CERTIFICATE FORMS

Dear Sir:

In reply to your letter of July 17, 1933, requesting my opinion as to whether or not the forms of tax sale certificates used for the 1932 tax sale can be used for the 1933 tax sale, I attach hereto:

1. A form to be used when the tax sale certificate is issued to an individual; and
2. A form to be used when the tax sale certificate is issued to the Treasurer of the State of Florida.

In having the certificates printed, please note that you are required, in addition to filling in the blanks, to insert in the form for the description of the property, and under the letter "T" the letter "S" or the letter "N", and under the letter "R" insert the letter "E" or the letter

DELINQUENT TAXES

"W", depending upon the location of the property described with reference to the Tallahassee Meridian.

TAX SALE CERTIFICATE NO.

1933

State of Florida,

County of

Office of Tax Collector,

....., A. D. 1933.

I,, Tax Collector for the County of, in the State of Florida, do hereby certify that I did, at public auction, pursuant to notice given by law as required, on this the day of, A. D. 1933, sell to

the land herein described for the sum of

..... dollars and cents, said sum being amount due and unpaid for taxes, cost and charges on the described lands for the Year of Our Lord One Thousand Nine Hundred and Thirty-two, that

or his assigns, will therefore be entitled to a deed of conveyance of such lands in accordance with law, unless the same shall be redeemed by payment of such amount and within such period of time as are provided by law.

The interest rate bid at the sale under Section 974, Compiled General Laws of Florida, 1932, Supplement, for the first year was per cent.

Said lands are described as follows, to-wit:

Description of Land	Sec.	T	R	Acres
.....				
.....				
.....				
.....				
.....				
.....				
.....				
.....				
.....				

in the County of, State of Florida. Assessed Value \$

Witness my hand at, Fla., this day of, A. D. 1933.

.....
Tax Collector for County, Florida.

NOTE.—Interest rate shall not be more than 18 per cent.

DELINQUENT TAXES

October 30, 1933

REDEMPTION OF LAND FROM TAX SALE CERTIFICATE WITH
BONDS ACCORDING TO LAST ASSESSED VALUATION*Dear Sir:*

This refers to your favor of October 30, in which you state that you are in receipt of the following wire from the Honorable Clyde Simmons, Clerk of the Circuit Court of Hardee County:

"Is it now permissible to use the lowest assessed valuation for 1931 and prior years under a bond settlement."

I beg to advise that the Supreme Court, in an opinion just handed down, in the case of State of Florida, ex rel W. B. McCollum versus R. E. Moye, as Clerk of the Circuit Court of DeSoto County, so holds that the redemption of lands from tax liens is authorized to be made upon payment of amounts to be ascertained as taxes due for the particular year by applying the millage duly fixed for the year for which taxes are to be paid by redemption to "the last assessed valuation against the land," if that is less than the regular valuation.

The Court holds that this rule is applicable where the taxes are under the law payable with bonds.

Ordinarily, these opinions of the Supreme Court do not become effective until fifteen days after the decision, or rather until the mandate goes down; but, representing the State of Florida, I do not deem it advisable to file a motion for rehearing, and I would suggest that you advise the Clerks that they may redeem with bonds in accordance with the last assessed valuation, if it is the lowest, in order that progress may be made in closing their books, holding their sales, etc.

April 25, 1933

LIEN FOR TAXES CONTINUES UNTIL PAID; TAX DEED DOES NOT
EXTINGUISH PRIOR CERTIFICATE*Dear Sir:*

I am in receipt of your letter of the 21st instant, with reference to tax deeds in which you state it seems incumbent upon one applying for tax deed to pay only those taxes and redeem tax certificates subsequent to the tax certificates upon which application for tax deed is issued. You further state it appears that one holding a tax certificate issued subsequent to a certificate owned by another party may eliminate or bar any rights or claims which the owner of the old certificate might have.

In reply I beg to say that your opinion is probably based on the language of Section 1003, Compiled General Laws of Florida, 1927, as amended by Chapter 14572, Laws of Florida, Acts of 1929. It is necessary however, to construe this statute with other statutes. Section 894, Compiled General Laws of Florida, 1927, as amended by Chapter 14572, Laws of Florida, Acts of 1927, provides as follows:

DELINQUENT TAXES

"All taxes imposed pursuant to the Constitution and laws of this State shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment."

Your attention is further called to the form of tax deed provided for in Section 1003, above mentioned, in which the following language appears:

"Provided, however, that said land shall continue subject and liable for any unpaid taxes thereon."

Your further attention is called to the decision of the Supreme Court of Florida in the case of *City of Sanford v. Dial*, 104 Fla. 1, 142 So. 233. The eleventh head note of this case reads as follows:

"All lien claimants should be made party to suit to foreclose State tax liens so as to pass indefeasible title."

The seventeenth head note in said case reads as follows:

"Purchaser at tax sale foreclosure sale takes subject to liens for State and county taxes and municipal taxes and special assessments not past due when foreclosure decree is rendered."

From the above it appears that a tax deed does not extinguish the lien of a tax certificate issued prior to a tax certificate on which the tax deed may be issued, and it further appears that all parties having tax liens against the land should be made parties defendant in proceedings foreclosing tax deeds.

April 11, 1933

**COMPTROLLER NOT AUTHORIZED TO CHANGE VALUATIONS
FIXED BY TAX ASSESSOR**

Dear Sir:

This refers to your oral conversation and request for an opinion relative to your authority to accept, or authorize the acceptance by tax collectors or clerks of the Circuit Court of taxes or the redemptions on lands that apparently are assessed at too high a figure.

Section 929, Compiled General Laws, provides that the county assessor of taxes shall complete the assessment rolls of their respective counties on or before the first Monday in July in every year, and that on that day the assessor shall meet with the Board of County Commissioners at the clerk's office for the purpose of hearing complaints and receiving testimony, as to the value of any property, real or personal, as fixed by the county assessor of taxes, of perfecting, reviewing and equalizing the assessment, and may continue from day to day for such purpose. This Section of our law further provides that due notice of such meeting shall be given by publication in a newspaper published in such county, or

DELINQUENT TAXES

by posting notice, if there is no such newspaper, at least fifteen days before the Board holds such session for the purpose of hearing complaints and receiving testimony, as to the value of any property, as fixed and assessed by the county assessor of taxes. Thus it is that every property owner is given his chance and day in Court, so to speak to have his assessment reduced or fixed at a proper value.

Section 1038, Compiled General Laws, provides that the Courts of Chancery in this State shall have jurisdiction in all cases involving the legality of any tax assessment or toll and shall inquire into and determine the *legality, equality and validity* of the same under the Constitution and Laws of the State, and shall render decrees setting aside such tax, assessment or toll, or any part of the same that shall appear to be contrary to law.

I am of the opinion that there is no law in this State that would authorize you, as Comptroller, to change or modify the assessments. It is my opinion that the Legislature has determined the policy that each property owner is given notice to appear before the Tax Equalizing Board, and if such property owner feels aggrieved, he may also appeal to the Courts, under the authority of Section 1038, Compiled General Laws. In other words, when the tax assessor has exercised his judgment as to values, and the Board of County Commissioners have held their hearing, after due notice to all property owners, that then the assessment so adjudged shall stand, unless the Court of Chancery having been appealed to by a property owner, and after taking testimony as to values, legality, etc., should decree otherwise.

Section 952, Compiled General Laws, as to errors and insolvencies, in my opinion, does not cover the case of error, in judgment as to valuation. Thus it is that I reach the conclusion that under our system of taxation, you, as Comptroller, have no authority to adjust valuations.

August 7, 1933

COMPTROLLER AUTHORIZED TO CANCEL TAX SALE CERTIFICATE
AND MAKE REFUND UNDER SECTION 1009 C. G. L.

Dear Sir:

In your letter of July 24th, 1933, you state that: You have before you a certificate of the Clerk of the Circuit Court of Volusia County to the effect that the description contained in the tax sale certificate No. 4455 of the 1930 sale and the tax deed issued thereon is void, and that the holder of the deed has demanded a refund of the amount paid for the tax sale certificate; that the Clerk states that he bases his certificate upon an order of the Circuit Court of Volusia County to the effect that the description in the tax deed is void. You ask my opinion on the question:

Should you comply with Section 1009, Compiled General Laws of Florida, 1927, or should you refuse to comply therewith because the

DELINQUENT TAXES

proceedings for the cancellation of the tax deed was not had under Sections 1007 and 1008, Compiled General Laws of Florida, 1927?

Section 1007, Compiled General Laws of Florida, 1927, provides that no suit or proceeding shall be maintained for the purpose of cancelling a tax sale certificate *held by the State* unless the Comptroller be made a party to such proceedings.

Section 1008, Compiled General Laws of Florida, 1927, provides that no decree shall be made by any Court on behalf of any land owner to enjoin any tax sale or set aside or cancel any tax sale certificate until the owner shall have paid the taxes lawfully assessed.

The case stated by you does not come within either of these last mentioned Sections.

In this case you will be governed by Section 1009, Compiled General Laws of Florida, 1927. If you are satisfied that the description in the tax sale certificate and the tax deed issued thereon is void, then you will be authorized to draw a warrant on the State Treasurer for "the amount received by the State for the purchase of" the tax sale certificate. If, on the other hand, you are not satisfied from the recitals in the Clerk's certificate that the description is void, then it will be your duty to refuse to draw the warrant as requested.

February 27, 1934

AUTHORITY OF COMPTROLLER TO CANCEL TAX SALE CERTIFICATE UPON PROPERTY ACQUIRED BY A COUNTY FOR PARK PURPOSES

Dear Sir:

I have your letter in which you state that a County acquired, for park purposes, a tract of land against which there was, at that time and is now, outstanding a tax sale certificate held by the State. You request my opinion as to your authority to cancel that part of the tax sale certificate which represents State taxes.

It is my opinion that you do not have authority to cancel that part of the tax sale certificate above referred to which represents State taxes. See Section 894, Compiled General Laws of Florida, 1932 Supplement.

April 17, 1933

CHAPTER 16253, ACTS OF 1933, EXTENDING TIME OF PAYMENT OF 1932 TAXES AFFECTS ONLY TAXES PAYABLE TO TAX COLLECTOR. INTEREST ON TAX SALE CERTIFICATE BEGINS ON DATE THEREOF

Dear Sir:

Replying to your letter of this date, to which is attached copy of telegram from Honorable E. B. Leatherman, Clerk Circuit Court, Dade

DELINQUENT TAXES

County with reference to the effect of Senate Bill No. 1, on interest on 1932 taxes paid in connection with redemption or sale of tax sales certificates, I beg to advise that I have seen a copy of the bill which directs the tax collectors to keep open their books until the first day of June, A. D., 1933, and in my opinion this does not affect in any way any taxes other than those collected by the county tax collectors.

With respect to the matter of interest on subsequent taxes required to be paid upon the redemption or sale of tax certificates, Section 985 of the Compiled General Laws of Florida, 1927, as amended by Section 9 of Chapter 14572, Acts of 1929, provides that interest begins from the date of sale. To use the 1932 taxes as an illustration under the provisions of the Statutes just referred to, interest would not begin to run until the date of sale of delinquent taxes in the year 1933; that is to say, one redeeming a tax certificate during the present year, on or before the date of sale for delinquent taxes, would not be required under Section 985 of the Compiled General Laws of Florida, as amended, to pay any interest thereon. He would pay interest on the 1931 taxes from the sale date in 1932, and so on.

February 20, 1934.

AUTHORITY OF CLERK TO DISTRIBUTE TO CITIES AND TOWNS
PROCEEDS FROM COLLECTION OF DELINQUENT TAXES
UNDER SECTION 2453, C. G. L.

Dear Sir:

I have your letter of February 16th requesting my opinion upon the following question:

Is the Clerk of the Circuit Court required under Section 2453, Compiled General Laws of Florida 1927, to distribute to cities and towns one-half of the proceeds derived from the redemption of lands located therein from that part of the delinquent taxes levied "for road and bridge purposes"?

This Section authorizing the Board of County Commissioners to levy an annual tax for "road and bridge purposes" and requires "that one-half the amount so realized from said special tax on the property in incorporated cities and towns, shall be turned over to said cities and towns, * * *."

It is the duty of a Clerk of the Circuit Court to distribute to the proper County funds all moneys received from tax redemptions which were levied for County purposes. See Chapter 15918, Laws of Florida, Acts of 1933.

It is the duty of the Board of County Commissioners to distribute to the cities and towns all money due them under Section 2453, *supra*. See Hillsborough County vs. State, 57 Fla. 50, 48 So. 976; Dade County vs. City of Miami, 77 Fla. 786, 82 So. 354.

It is my opinion that the Clerk of the Circuit Court is not required under Section 2453, *supra*, to distribute to cities and towns one-half of

DELINQUENT TAXES

the proceeds derived from the redemption of lands located therein from that part of the delinquent taxes levied "for road and bridge purposes."

June 16, 1933.

DISTRIBUTION UNDER SENATE BILL 194, CHAPTER 15918, ACTS OF 1933 OF TAX MONEYS, TO BEGIN JULY 1, 1933

Dear Sir:

This is in reply to your letter of June 12, with reference to Senate Bill No. 194, Chapter 15918, Act of 1933 Session of the Legislature. This act has to do with distribution of tax moneys collected by the various Clerks of the Circuit Courts and their remittance to you of the State's portion of the collection. The act, according to its terms, becomes effective July 1, 1933.

After carefully considering the context of the act, it is my opinion that it was the intention of the Legislature that this act should be effective as to the various collections in accordance with the fiscal year. Thus it is that I reach the conclusion that all collections made up to and including June 30, 1933, even though not mechanically and actually distributed until the early part of July, yet the distribution of such moneys be distributed under the present law, and that the distributions provided for in Senate Bill No. 194, Chapter 15918, Acts of 1933, are applicable to all such collections made on July 1, 1933, and subsequent thereto.

March 29, 1933.

INTEREST ON TAX SALE CERTIFICATES AND OMITTED TAXES SHOULD BE PRO-RATED TO FUNDS FOR WHICH TAXES LEVIED

Dear Sir:

Replying to your letter of March 27th, with reference to the disbursement under Chapter 15050, Laws of Florida, Acts of 1931, of interest on tax certificates, it is my opinion that this interest should be pro-rated to the same fund that the principal goes to, that is, applied to the fund on which it was earned.

The State should have its pro-rata share, and so should the school fund, as well as the general county fund and other funds represented in the taxes for which the property was sold and the certificate issued.

May 22, 1934.

DATE OF EXECUTION OF DEED SHOULD BE DATE GIVEN IN NOTICE OF APPLICATION IN DEED

Dear Sir:

I am in receipt of your letter of the 18th instant, enclosing communication from Hon. Elliot W. Butts, Clerk Circuit Court Duval County, under date of the 17th instant making inquiry as to date of execution

DELINQUENT TAXES

of tax deed after notice, the second paragraph of which letter reads as follows:

"When an application for tax deed is made the application is duly advertised in a newspaper for four weeks, five publications, and in the advertisement a date for issuance of the deed is stated, as five days after the last publication of notice. What should be the date named for issuance of deed? The issuance five days after the last publication has been a custom of this office for many years. Can issuance of the tax deed, and recordation, be delayed beyond the date set for issuance? Can an applicant for tax deed demand, and sustain his demand by legal action, that a tax deed for which he has applied, be issued upon the date due to issue as stated in the advertisement?"

In reply your attention is called to Sections 1000, 1001 and 1002, Compiled General Laws of Florida, 1927. Section 1000 provides for notice of application for tax deed. Section 1001 prescribed form of notice. Section 1002 provides for proof of publication or notice to be filed by the Clerk and also provides that at any time before the execution of such tax deed any person owning or claiming the land or any creditor of such owner or claimant may redeem the same at any time before the execution of such tax deed.

You will note that the form of notice prescribed by Section 1002 contemplates the naming of a definite date for execution of the deed. I am not prepared to say, however, that the notice would be improper by virtue of reciting that the deed would be issued 5 days after the last publication. In this connection, I wish to say, however, that I could not well pass upon the form of publication mentioned without seeing the form.

I am inclined to think that the execution of a tax deed within a reasonable time subsequent to the date for execution named in the notice would not be invalid but in the abundance of caution I think it would be well to execute such deeds on the day fixed by the notice. It seems to me that it would be proper to execute the deed on the day named by the notice for the further reason that the owner, under the provisions of Section 1002, has a continuing right of redemption to date of actual execution of deed whether executed on the day named or some subsequent date. See *Fountain vs. State*, 94 Fla. 750, 114 So. 511. You can readily see, therefore, that any postponement of an execution might be prejudicial to the interest of the applicant for tax deed.

May 12, 1934.

STATE LANDS ACQUIRED BY FORECLOSURE OF TAX CERTIFICATES UNDER CHAPTER 14572 OF 1929 NOT SUBJECT TO TAXATION

Dear Sir:

I am in receipt of your letter of the 10th inst., advising that the State has acquired title to certain lands by foreclosure of tax certificates

DELINQUENT TAXES

under the provisions of Section 24 of Chapter 14572, Acts of 1929. You call attention to Section 3 of Chapter 16252, Acts of 1933, providing that all lands against which the State of Florida holds any tax certificate or lien for delinquent taxes shall be assessed for taxes for the year 1933 and all subsequent years. You make inquiry if, under the provisions of said Section 3 of Chapter 16252 lands acquired by the State under the provisions of Section 24 of Chapter 14572, Acts of 1929, must be assessed.

In reply I beg to say that in my opinion Section 3 of Chapter 16252 requiring assessment of lands against which the State holds any tax certificate or lien does not apply to lands on which the State holds title by virtue of said Section 24 of Chapter 14572. While it appears that the taxes on such lands should not be extended, I think the statutes contemplate that the same should be listed on the tax roll giving the valuation thereof in each instance.

April 4, 1933.

LAST ASSESSED VALUATION, IF LOWER THAN REGULAR VALUATION, TO BE APPLIED IN DETERMINING SUBSEQUENT AND OMITTED TAXES IN REDEMPTION OF TAX SALE CERTIFICATE; MILLAGE OF EACH YEAR TO BE APPLIED TO REDUCED VALUES

Dear Sir:

Replying to your letter of the 1st instant, which reads as follows:

"Former Attorney General Fred H. Davis, ruled on August 2, 1928, as follows:

'I think that the last clause of Section 5, Chapter 7806, Acts of 1919, is sufficiently complete in itself and explicit enough to warrant the interpretation which has been placed thereon to the effect that tax certificates can be redeemed upon the basis of the last assessed valuation where such last assessed valuation is less than the regular valuation.'

"This opinion of the former Attorney General was mimeographed and sent from my office to the several Clerks of the Circuit Court and Boards of County Commissioners of the State of Florida. Since sending out this circular letter, I have been asked many questions with reference to same. I would, therefore, like to have your opinion as to the following questions:

'Certificates No. 993, taxes for the year 1927, sale of 1928, assessed valuation \$200.00, millage 84 mills.

Taxes 1928, assessed valuation \$150.00, millage—55½;

taxes for 1929, assessed valuation \$200.00, millage—56¼;

taxes for 1930, assessed valuation \$120.00, millage—122½;

taxes for 1931, assessed valuation \$ 90.00, millage—66⅞;

taxes for 1932, assessed valuation \$ 90.00, millage—75⅜.'

DELINQUENT TAXES

"In your opinion in redeeming the above delinquent certificates on the basis of the last assessed valuation should this property be redeemed as follows:

1927 taxes—assessed valuation	\$90.00,	millage	84 ;
1928 taxes—assessed valuation	\$90.00,	millage	55½;
1929 taxes—assessed valuation	\$90.00,	millage	56¼;
1930 taxes—assessed valuation	\$90.00,	millage	122½;
1931 taxes—assessed valuation	\$90.00,	millage	66⅞;
1932 taxes—assessed valuation	\$90.00,	millage	75⅜.'

"Or would it be permissible to use the last assessed valuation and the last millage?"

"Very truly yours,

"(Signed) J. M. LEE,
Comptroller."

It is my opinion that Section 997 of the Compiled General Laws of Florida 1927, authorizing the last assessed valuation against land to be taken as a basis on which to compute the unpaid and omitted taxes upon the redemption of tax sales certificates, means the valuation placed by the assessor, and does not authorize the use of the last millage levied.

Note that the words "last assessed valuation" are used. Section 984 provides that the tax assessor, in making up the assessment rolls, shall place thereon the lands certified by the Comptroller as having been sold to the State for taxes, and shall enter their valuations and note that tax certificates are outstanding, but he does not extend the amount of taxes on the roll.

It is then provided that when the lands are redeemed, the person redeeming shall pay the taxes for the years in which said lands are marked as aforesaid, at the rate of taxation levied thereon in those years respectively. As I take it, this means at the rate of millage levied for the respective years subsequent to the year for which the same was sold, and for which the certificate may be outstanding.

I do not think Section 997 changes this requirement to use the millage levied for the respective years, and it is my opinion that the millage for each particular year must be used in computing the amount of unpaid and omitted taxes, and that you cannot take the millage levied for the last year.

February 21, 1933.

PROPERTY OMITTED TO BE ASSESSED

Dear Sir:

Replying to your favor of February 20, permit me to say Section 924, in part, reads as follows:

"If any county assessor of taxes when making his assessment shall discover that any land in his county has for any

DELINQUENT TAXES

reason escaped taxation for any or all of the three previous years or that any land was illegally sold for taxes and was then liable for taxation, he shall, in addition to the assessment of such lands for that year, *assess the same separately for such year or years* that they may have escaped taxation, or were so illegally sold, at the cash value thereof in such year, noting distinctly the year when such land escaped taxation, * * *."

You will note that the Statute requires the assessor to assess the land separately. In view of the language of the statute, it is my opinion that the safest way to make the assessment would be to assess the property upon the tax roll for the omitted years with the same degree of particularity as the property was originally assessed and as other property is ordinarily assessed.

SECTION 10

PROPERTY IN HANDS OF COURT RECEIVER

June 7, 1934.

SALE OF PERSONAL PROPERTY IN THE HANDS OF A COURT
RECEIVER FOR NON-PAYMENT OF STATE AND
COUNTY TAXES*Dear Sir:*

I have your letter of June 1st in which you request my opinion upon the following question:

"Can Personal Property that has been legally assessed but has passed into the hands of a receiver for a State or Federal court be levied on by the tax collector and sold for delinquent taxes?"

Personal Property in the hands of a Receiver appointed by a Federal or State Court cannot be levied upon and sold by the County Tax Collector without first obtaining the consent of the Court who appointed the Receiver.

I quote below from an opinion of the Supreme Court of the United States in the case of *In Re Tyler*, 149 U. S. 164, 37 L. Ed. 689, wherein this subject was discussed and a method of procedure suggested, to-wit:

"The inevitable conclusion that this must be so, if constitutional principles are to be respected in governmental administration, does not involve interruption in the payment of taxes or the displacement or impairment of the lien therefor, but, on the contrary, *it makes it the imperative duty of the Court to recognize as paramount, and enforce with promptness and vigor the just claims of the authorities for the prescribed contributions to State and municipal revenue.* And when controversy arises as to the legality of the tax claimed, there ought to be no serious difficulty in adjusting such controversy upon proper suggestion. The usual course pursued in such cases is by intervention *pro interesse suo*, as in the instance of sequestration * * *. The tax collector is a ministerial officer * * *, and no reason is perceived why he should not bring his claim to the attention of the Court, while, on the other hand, it is clearly the duty of the receiver to do so, if he contends that the taxes are illegal. If found valid, *they must be paid*; if invalid, the Court will so declare, subject to the review of the appellate tribunals."

To the same effect, see *Union Trust Company versus Great Eastern Lumber Company*, 248 Fed. 47.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
PROPERTY IN HANDS OF COURT RECEIVER

125

May 26, 1934.

TAX SALES COVERING RAILROAD LANDS IN HANDS OF RECEIVER

Dear Sir:

I am in receipt of your letter of the 17th inst., in which you recite that the Seaboard Air Line Railroad owns certain properties in certain counties which are not used for railroad purposes; that these properties are assessed by the local Tax Assessors and appear on the tax roll like all other real estate properties in the various counties; that the Tax Collectors are making up their sales and are preparing to advertise these lands along with other delinquent lands; that the Seaboard Receivers are contending that since the railroad is in receivership the Tax Collectors will be guilty of contempt of the Federal Court if they advertise these lands; that the Tax Collectors have asked your office whether or not they should advertise these lands; that you will be pleased to have me advise you.

Your attention is called to the following statutes and authorities which will be of interest in the premises:

"Whenever in any cause pending in any Court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

28 U. S. C. A. 124.

"The president, secretary, superintendent, manager or agent of any railroad company, or receiver of any railroad, owning lands or any other real estate in any county of this State shall make out and deliver to the County Assessor of taxes on or before the first Monday in March in each year, of each County where the property is situated, a full and complete list of all lands or lots owned or held by them, the same as the property of individuals, and should any railroad company fail to return their real property as required by this Act the County Assessor of taxes shall ascertain and assess the same as in cases of individual property."

Sec. 968, C. G. L. of Fla., 1927.

"All taxes imposed pursuant to the Constitution and laws of this State shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment, and no act of omission or commission on the part of any tax assessors, or any assistant tax assessors, or any tax collector, or any Board of County Commissioners, or any Clerk of the Circuit Court or any other officer of this State, or any newspaper in

BIENNIAL REPORT OF THE ATTORNEY GENERAL
PROPERTY IN HANDS OF COURT RECEIVER

which any advertisement of sale may be published, shall operate to defeat the payment of said taxes."

"Sec. 894, C. G. L. of Fla., 1927 (1934 Supplement).

"All real and personal property shall be subject to taxation on the first day of January of each year, and this Chapter shall create a lien upon such property for the purposes thereof superior to all others."

Sec. 896. C. G. L. of Fla. 1927.

"The statute gives the State a lien upon land for taxes duly assessed thereon. Such lien is evidenced by tax sale certificates issued at the sale for non-payment of taxes."

Ridgeway v. Peacock, 100 Fla. 1297, 131 So. 140.

"The general doctrine that property in the possession of a receiver appointed by a court is in custodia legis, and that unauthorized interference with such possession is punishable as a contempt, is conceded; but it is contended that this salutary rule has no application to the collection of taxes. Undoubtedly property so situated is not thereby rendered exempt from the imposition of taxes by the government within whose jurisdiction the property is, and the lien for taxes is superior to all other liens whatsoever, except judicial costs, when the property is rightfully in the custody of the law, but this *does not justify a physical invasion* of such custody and a wanton disregard of the orders of the court in respect of it. The maintenance of the system of checks * * * and balances characteristic of republican institutions requires the co-ordinate departments of government, whether Federal or state, to refrain from any infringement of the independence of each other, *and the possession of property by the judicial department cannot be arbitrarily encroached upon, save in violation of this fundamental principle.*" (Italics supplied.)

Ex parte; In the matter of M. V. Tyler, 149 U. S. 164, 37 L. Ed. 689.

The test of whether the acts of a Tax Collector will cause him to be in contempt of Court is as follows:

Will his acts interfere with the possession of the Court as exercised through its receiver?

The sale of the property and the issuing of a tax sale certificate by the Tax Collector is simply a ministerial act in the orderly process of the collection of delinquent taxes. The tax sale certificate is nothing more than the evidence of the lien given by law for the non-payment of the taxes due the State. The acts of the Tax Collector in the sale of the property and the issuing of the tax sale certificate do not transfer or convey the right of possession or the title to the property.

In view of the above, it is my opinion that the Tax Collectors will not be in contempt of Court by virtue of advertisement and selling at regular tax sales lands assessed for taxes by the County Tax Assessors belonging to a railroad company, which is in the hands of a receiver appointed by a Federal Court.

March 25, 1933.

PERSONAL PROPERTY IN RECEIVERSHIP NOT SUBJECT TO
LOWER VALUATION

Dear Sir:

Replying to your letter of March 22nd, in which you ask to be advised whether there is a law permitting the assessment of personal property in receivership at a lower valuation or rate of taxation than the same property should be assessed at if it were not in receivership, permit me to say Section 1 of Article IX of the Constitution of the State of Florida requires a uniform and equal rate of taxation, and Section 919 of the Compiled General Laws of Florida 1927, reads as follows:

"All personal estate liable to taxation, the value of which shall not have been specified under oath as aforesaid, shall be estimated by the county assessor of taxes at its true cash value, according to his best judgment and information."

SECTION 11

SCHOOL TAXES—PAYMENT WITH CERTIFICATE
OF INDEBTEDNESS

January 20, 1934

AUTHORITY COUNTY TAX COLLECTOR TO ACCEPT CERTIFI-
CATES OF INDEBTEDNESS AND ORDERS OF BOARD
OF PUBLIC INSTRUCTION UNDER SECTIONS
507 AND 946, C. G. L. 1927

Dear Sir:

I have your request for my opinion as to what forms of certificates of indebtedness and other orders issued by a County Board of Public Instruction may be accepted by a County Tax Collector in payment of County School taxes under Sections 507 and 946, Compiled General Laws of Florida, 1927.

Section 507, *supra*, was evidently enacted with reference to certificates of indebtedness issued in lieu of bonds prior to the enactment of the present constitutional provision authorizing the issuance of bonds by a Special Tax School District. (See Opinion to Hon. J. M. Lee, dated August 18, 1933) This provision of the Constitution is Section 17, Article XII, and was adopted at the General Election of 1912.

It is my opinion that the County Tax Collector is authorized under Section 507, *supra*, to accept in payment of County School taxes such certificates of indebtedness as may have been issued by the County Board of Public Instruction in lieu of bonds and prior to the General Election of 1912.

That part of Section 946, *supra*, referred to in your letter, reads as follows:

"Orders issued by the County Board of Public Instruction shall be receivable in the Counties where such orders are issued for County School purposes."

This appears in Section 38 of Chapter 5596, Laws of Florida, Acts of 1907, and was brought forward as Section 738, Revised General Statutes of Florida, 1920.

Section 6 of Chapter 6932, Laws of Florida, Acts of 1915 (being Section 2408, Compiled General Laws of Florida, 1927), requires the Board of Public Instruction to keep accurate accounts of all receipts and disbursements and further provides:

"No check or warrant or warrants shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said Board."

Because of this Section the Tax Collector will never be called upon to accept in payment of County School taxes any order issued by a

BIENNIAL REPORT OF THE ATTORNEY GENERAL 129
SCHOOL TAXES—PAYMENT WITH CERTIFICATE OF
INDEBTEDNESS

Board of Public Instruction since January 1, 1917, which was the date that this law became effective.

It is my opinion that the Tax Collector is authorized, under Section 946, supra, to accept in payment of County School taxes all orders issued by the Board of Public Instruction prior to January 1, 1917, which was the date that Section 2408, supra, became effective.

April 18, 1934

CERTAIN CERTIFICATES OF INDEBTEDNESS ISSUED BY SCHOOL
BOARD OKALOOSA COUNTY RECEIVABLE BY TAX COLLECTOR
UNDER SECTION 507, COMPILED GENERAL LAWS, IN
PAYMENT OF COUNTY-WIDE SCHOOL TAXES

Dear Sir:

This acknowledges receipt of your communication of April 14, 1934, in which you enclose a copy of a certificate of indebtedness issued by the Board of Public Instruction of Okaloosa County in previous years, which is in words and figures as follows, to-wit:

\$125.00

Crestview, Fla.,

5-14-1929

STATE OF FLORIDA, OKALOOSA, COUNTY:

The Board of Public Instruction of Okaloosa County, Florida, hereby certifies that it is indebted to John Doe in the amount of One hundred twenty-five Dollars which will be paid to the holder of this certificate from the first available funds, together with interest at eight per cent per annum from date..

BOARD OF PUBLIC INSTRUCTION,
OKALOOSA COUNTY, FLORIDA.

BY.....

Chairman.

ATTEST.....

County Superintendent

I understand that certificates of indebtedness similar to the above were issued to evidence an indebtedness then due by the Board of Public Instruction, but which was not paid because of insufficient current funds.

You ask whether or not such outstanding current and unpaid certificates of indebtedness issued under such circumstances, and of which the above is a typical example, are receivable for delinquent county school taxes under Section 507, Compiled General Laws of 1927.

It is my opinion that such are receivable by the county tax collector under said Section 507, at their face amount with no allowance for interest.

Such certificates of indebtedness issued merely to evidence an existing obligation for current operating expenses are not of the same class

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SCHOOL TAXES—PAYMENT WITH CERTIFICATE OF
INDEBTEDNESS

as time warrants or other written obligations issued in lieu of bonds, and which were covered by my prior opinions of August 18, 1933, and January 20, 1934, both addressed to the Honorable J. M. Lee, Comptroller.

The validity of such certificates of indebtedness as are involved in this opinion, and their enforceability, were specifically upheld in Board of Public Instruction of Okaloosa County vs Kennedy, 147 So. 250, except as to the provision for interest.

August 18, 1933

TAX ANTICIPATION NOTES NOT CLASSED AS "BONDS" OR
"TIME WARRANTS."

Dear Sir:

The question involved is whether tax anticipation notes issued by county boards of public instruction are receivable either under the Futch Bill or under Section 507, Compiled General Laws of 1927, in payment of county school taxes.

It is my opinion that these tax anticipation notes, which we presume to have been issued pursuant to Chapter 15779, Acts of 1931, Extra Session, Sections 1 and 3, are not "bonds or matured interest coupons" such as may be receivable under the terms of the Futch Bill.

It is also my opinion that these tax anticipation notes are not "certificates of indebtedness" within the meaning of Section 507, Compiled General Laws 1927. This section is derived from Chapter 3872, Acts of 1889, Section 40, and also appeared in the Act of June 27, 1871, Section 7, and was evidently enacted with reference to certificates of indebtedness issued in lieu of bonds prior to the enactment of the present constitutional provision.

If these tax anticipation notes are "bonds," then they are contrary to the Constitution of Florida. See Article 12, Sections 9, 10, 11 and 17.

If they are not "bonds," then they do not come under the provisions of the Futch Bill.

I therefore conclude that these tax anticipation notes are neither certificates of indebtedness nor bonds, and that, therefore, they are not receivable either under said Section 507 or under the Futch Bill.

For your information I cite you to the following cases:

Savage vs Board of Public Instruction, 133 So 341;

Board of Public Instruction vs McKenzie, 136 So 899;

State vs Board of Public Instruction, 125 So 357;

in which it was held that county school funds may not be used for the payment of bonds, or time warrants issued to raise current operating expenses. This holding is distinguished in the Savage and McKenzie

**SCHOOL TAXES—PAYMENT WITH CERTIFICATE OF
INDEBTEDNESS**

cases, on the ground that tax anticipation notes issued with reference to the anticipated revenue are not bonds or time warrants.

For your information also, Chapter 16171, Acts of 1933 (Senate Bill 736) in effect carries forward the general principles of the 1931 Act.

See also 11 C. J. page 77.

SECTION 12

DELINQUENT TAX LIST

March 1, 1933.

PUBLICATION OF NOTICE IN ONE NEWSPAPER—AUTHORITY
TO CORRECT ERRORS*Dear Sir:*

In response to your verbal inquiry of the 27th instant, permit me to say I have advised in my letter under date of February 17th that it is my opinion, in view of the provisions of Section 1 of Chapter 14572, Laws of Florida, Acts of 1929, that all taxes imposed pursuant to the Constitution and laws of this State, continue to be a first lien superior to all other liens on any property against which such taxes have been assessed, and that the same shall continue in full force and effect until discharged by payment, regardless of any act of omission or commission on the part of any tax assessor, tax collector, or board of county commissioners, clerk circuit court, or any other officer of this State, or any newspaper in which any advertisement of sale may be published, and that any such errors shall not operate to defeat the payment of said taxes.

It is my opinion that the provisions of the Section were intended to cover not only clerical errors, but errors of judgment or discretion on the part of the officers named, and therefore, the publication of the tax sale list in two newspapers would not invalidate the tax sale.

However, prior to the enactment of the Act of 1929, the Supreme Court in the case of *City of Orlando vs. Equitable Building and Loan Association* held as follows:

"The official publication of notice of tax sales in two newspapers, where the law requires it to be published officially in one only, renders the sales invalid."

In view of the fact that the Supreme Court has not heretofore, in construing the Act of 1929, expressly held that the official publication of the notice of tax sale in two newspapers would not invalidate the tax notice, it would be the safest plan for the county commissioners to publish the notice of said sale officially in only one newspaper. However, where the notice of tax sale has already been officially published in two newspapers, there is nothing for you as tax assessor to do except to assume that this error of judgment on the part of the county commissioners is cured by the provisions of the Act of 1929, and that the tax sale is in every respect valid.

June 20, 1933.

NEWSPAPER—BOARD COUNTY COMMISSIONERS AUTHORIZED
TO SELECT TO PRINT TAX LIST*Dear Sir:*

Replying to your favor of June 17th, relative to selection of a newspaper by the Board of County Commissioners to publish the tax list,

DELINQUENT TAX LISTS

permit me to say:

Section 3 of Chapter 14572, Laws of Florida, Acts of 1929, requires that the tax sale list shall be published for four consecutive weeks in some newspaper published in the County, if there be a newspaper, said newspaper to be selected by the Board of County Commissioners at their first regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the county for a period of not less than one year prior to its selection.

The same section provides that "the newspaper charges for advertising shall be fifteen cents per line for the four insertions per single column." And that "the editor, publisher, or owner shall have attached to his account an affidavit that he has not directly or indirectly paid or promised to pay the Tax Collector or any other person any consideration whatever, or any compensation of any description for having said notice published in his paper."

This Section also provides that "The Comptroller is authorized to audit said publisher's charges and draw his warrant for the same out of any moneys in the Treasury not otherwise appropriated."

It is clear from the language of the statute that the County Commissioners of a county are not required to call for or to accept bids for the publication of the tax list. They are clearly required "to select a newspaper which has been continuously published in the county for a period of not less than one year prior to its selection." When the county commissioners have done this, they have done all that the statute requires them to do.

It will be seen from what has been said that the selection of the newspaper to publish the tax sale list is by law the exclusive prerogative of the Board of County Commissioners, and it naturally follows that neither the Attorney General nor the Comptroller has any authority in the matter.

When the publisher's charges for publishing the tax sale list is presented to the Comptroller, he is authorized to audit the same and draw his warrant in payment thereof.

I am of the opinion that if upon an audit of the publisher's charges, it should be found that the amount is not in excess of that authorized by the statute, the same would be paid, but I do not think the Comptroller would refuse to pay the charge because it might be in an amount less than the maximum amount allowed by law.

The question of whether or not a particular newspaper is one of sufficient circulation or has been published for a sufficient length of time, are questions of fact to be determined in the first instance by the county commissioners, and their determination of the matter may be subject to review by a court of competent jurisdiction in appropriate proceedings to test the matter.

The statute requires the tax collector to "make out a statement of all real estate upon which the taxes have not been paid, specifying the amount due on each parcel, together with the cost of advertising and expense of sale, in the same order in which the land was assessed"

DELINQUENT TAX LISTS

If the tax collector can ascertain what the cost of advertising will be, he should in my opinion add the actual cost; if he is unable to definitely ascertain the actual cost, he should add the maximum amount allowed by law.

My conclusion in the matter is that the selection of a newspaper to publish the tax list is the exclusive function of the board of county commissioners, and that if in selecting the newspaper and in making the award for publishing the tax list, they have acted in a manner contrary to law, or have exceeded the authority conferred upon them by law, a court of competent jurisdiction may in appropriate proceedings compel them to rescind their action and proceed in substantial conformity to the provisions of the statute governing the subject.

February 6, 1933.

**LEGAL ADVERTISING—CONTRACT PRICES TO BE BASIS FOR
CHARGE AGAINST TAX-PAYER.**

Dear Sir:

This refers to your favor of February 4th, in which you request my opinion as to whether or not where printing of delinquent tax list is let at a lower rate than the maximum amount under the statute, the bill rendered should be for the maximum amount or for the amount at which the printing is actually done. It is my opinion that where the rate is less than the maximum rate, then that rate should be the basis for the charge against the tax-payer and not the maximum amount.

November 24, 1934.

**CLAIM OF STUART DAILY NEWS FOR PREPARATION AND
PUBLICATION OF DELINQUENT TAX LIST FOR THE
YEAR 1931 WHICH WAS NOT DISTRIBUTED**

Dear Sir:

I have your letter in which you recite the following facts:

The Stuart Daily News, being a newspaper published in Martin County, Florida, was duly designated as the paper in which should be published the delinquent tax list for the year 1931. On April 1, 1931, the Tax Collector of Martin County closed his books and on April 2nd, he turned over his first sheet of delinquent tax list to the newspaper, and continued this practice from day to day until all of the list was delivered to the newspaper. On April 15th the newspaper completed the setting of the type and on April 20th, it completed all corrections on the tax list. On April 24th, the newspaper printed the tax list for all five Saturdays in May. The list was to be published on each of the Saturdays in May and the sale was to have been held on June 1st. On April 28th, Chapter 15041, Laws of Florida, Acts of 1931, took effect. This law extended the time for the payment of taxes until June 15, 1931,

DELINQUENT TAX LISTS

and required the Tax Collectors to keep their books open until June 15th. On April 16th, the Tax Collector wired the Honorable Ernest Amos, Comptroller, explaining the situation in Martin County and asked him what effect the proposed law would have on the publication of the tax list in that County. Mr. Amos replied that exception was made in the proposed law for Counties where publication had already begun. This telegram was interpreted by the Tax Collector and the newspaper to mean that there need be no interruption of the plans for the June sale as contemplated. On May 11th, the Tax Collector received a telegram from the Honorable Ernest Amos to call off the proposed June tax sale because of the passage by the Legislature of Chapter 15041, which extended the time of payment of taxes until June 15th. Pursuant to these instructions the Tax Collector did call off the proposed June sale. In September another delinquent tax list was prepared by the Tax Collector and turned over to the newspaper, who published it and was paid therefor. However, the Legislature, in the meantime, had altered the form of the tax list in this and other Counties lying wholly or in part in the Everglades Drainage District and the Okeechobee Flood Control District so that it was impossible to salvage any part of the type that had been set for the publication of the first tax list.

The newspaper claims that it should be paid the actual costs of setting and publishing the first tax list and it has rendered a bill for \$700.00. The Board of County Commissioners has recommended by resolution that the bill be paid.

You request my opinion as to whether or not you have authority to pay this bill.

Section 969, Compiled General Laws of Florida, 1927, authorizes the advertising and selling of lands for unpaid taxes and also authorizes the Comptroller "to audit said publishers' charges and draw his warrant for the same out of any monies in the treasury not otherwise appropriated."

Chapter 15041, Laws of Florida, Acts of 1931, which extended the time of payment of delinquent taxes until June 15th, did not take effect until April 28th, whereas, the newspaper had set the type and published the list on April 24th. The Act by its terms was not applicable to Counties in the State in which the delinquent tax list had been, or was then being published and distributed. Section 4 of Article IX of the State Constitution reads as follows: "No money shall be drawn from the treasury except in pursuance of appropriations made by law." The Act does not make an appropriation for a case such as that of the Stuart Daily News.

In view of the above, it is my opinion that you do not have authority to pay the bill of the Stuart Daily News for the services rendered. This bill can be paid only upon an appropriation by the Legislature.

DELINQUENT TAX LISTS

February 9, 1934

MEANING OF "HEAD NOTICE" UNDER SECTION 969, C. G. L. IN
PUBLICATION OF DELINQUENT TAX LIST*Dear Sir:*

I have your letter of February 8th in which you request my opinion as to the meaning of the words "head notice" as used in Section 969, Compiled General Laws of Florida, 1932 Supplement.

The County Tax Collector, under Section 969, *supra*, is required to advertise and sell lands upon which the taxes are not paid before April 1st of any year. "He shall make out a statement of all such real estate specifying the amount due on each parcel, together with the cost of advertising and expense of sale, in the same order in which the land was assessed, and such list shall be published once each week for four consecutive weeks in some newspaper published in the County * * *." " * * * and the newspaper charges for advertising shall be 15¢ per line for the four insertions per single column, and the Tax Collector shall receive the same for posting at three public places; but in neither case shall there be any charge for the head notice * * *." On January 16, A. D. 1932, I rendered an opinion upon this subject, which in part reads as follows:

"If I understand this situation, the question arises over the charge for the head-notices and the single line running across the top of each page showing the description of the land, the name of the owner and total tax and expense. It seems to me that the statute is very clear with reference to the head-notices. By reference to Section 969 of the Compiled General Laws it will be seen that it is specifically provided that there shall be no charge for head-notices. Considering the statutes in general, it seems to me that it is clearly the intention of the Legislature that there shall be no charge for the head-lines at the top of the page which gives an index of the description of the land, etc., for the reason that the law provides 15¢ per line single column or 30¢ per line double column for publishing the tax sale advertisement, and this amount is chargeable to the taxpayer and that is all that can be charged against him, and the intent of the law appears clearly to be that this is the total amount that can be charged for tax sale advertisements."

You advise that some Tax Collectors in making out the statement of the real estate for publication describes the lands in a sub-division as follows:

"Keystone Park, Plat Book 5, page 6
Lot 1, Block 5,
Lot 3, Block 10,
Lot 4, Block 7."

7-27-17

DELINQUENT TAX LISTS

It is my opinion that the newspaper publishing the delinquent tax list is entitled to charge the legal rate for the line or lines describing the sub-division and giving the plat book and page number and the section, township and range. This cannot be considered as a "head-notice."

February 28, 1933

AUTHORIZED TO REDESIGNATE NEWSPAPER TO PRINT
DELINQUENT TAX LIST

Dear Sir:

Replying to your letter of February 23rd, permit me to say the Supreme Court in the case of *Parker vs Evening News Publishing Company*, 54 Fla., 544, 45 So 309, and in *Bowden vs Ricker*, 70 Fla 154, 69 So 694, said:

"The power given to the county commissioners to designate a newspaper to print the delinquent tax list implies discretion, and includes the power to reconsider and to redesignate when private rights are not directly injured, if the interest of the public required it."

And in the case of *Townsend vs Brown*, 69 Fla 155, 67 So 369, the Supreme Court said:

"The provisions of the statute requiring a publication of the delinquent tax list in a newspaper 'said newspaper to be selected by the county commissioners in February' is not mandatory as to the time of selection. But the duty continues till properly performed."

In view of the Supreme Court opinions quoted above, it appears that the county commissioners of your county would be authorized after having designated a newspaper, to reconsider and redesignate.

As to whether the county commissioners may designate a newspaper by secret vote, permit me to say that all of the official acts of the board of county commissioners are supposed to be made a matter of record on the minutes of said board. There is no statute providing whether the vote of the individual members shall be open or secret.

Relative to the question of whether the chairman of the board is entitled to vote except "in case of a tie," it is my opinion that the chairman of the board is as much a member of the board as any other member, and is entitled to vote as a member, regardless of whether or not a tie exists in the vote of the board.

A motion to reconsider and redesignate a newspaper could be made by any member of the board.

DELINQUENT TAX LISTS

July 26, 1934

NEWSPAPERS MUST BE PRINTED WITHIN COUNTY TO QUALIFY
FOR LEGAL ADVERTISING*Dear Sir:*

I am in receipt of your letter of July twenty-third making inquiry as to whether a paper, in addition to being published in a county, entered in the Post Office of such county, is a suitable publication for carrying legal notices or advertising, when such paper is printed outside of said county.

In reply your attention is directed to Chapter 14830, Acts of 1931, which provides that no notice or publication required to be published in a newspaper shall be deemed to have been published in accordance with the Statutes, providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication in a newspaper, which, at the time of such publication, shall have been continuously published at least once each week and shall have been entered as second class mail matter at a Post Office in the county where published for a period of one year next preceding the first insertion of such publication. You will note that said statute does not refer to such newspaper being printed in such county.

The above statute, however, does not appear to have repealed Section 1 of Chapter 12104, Acts of 1927, the same being Section 4901, Compiled General Laws of Florida, 1927.

This Section provides, with reference to publication or notice in a newspaper, that the rule of interpretation is and has been a publication in a newspaper printed and published and entered, or qualified to be entered, as second class matter, at a Post Office in a county where published. Under this Statute, which appears to be still in force, printing as well as publishing in the county seems to be required.

March 22, 1933

RATE FOR ADVERTISING SALE OF LANDS FOR UNPAID TAXES

Dear Sir:

Replying to yours of March 22nd, permit me to say paragraph 2 of Section 3 of Chapter 14572, Laws of Florida, Acts of 1929, fixes the rate to be paid newspapers for advertising the sale of lands for unpaid taxes and the rate is "15¢ per line for the four insertions per single column." The Section further provides that there should be no charge for the "head notes."

Section 4668, Compiled General Laws of Florida, 1927, may be applicable to publication of other official notice or other legal advertisement but is not applicable to advertisement of the sale of lands for unpaid State and County taxes.

SECTION 13

MISCELLANEOUS

May 21, 1934.

DESCRIPTION TO BE USED BY COUNTY ASSESSOR OF TAXES IN
ASSESSING LAND IN SUBDIVISIONS*Dear Sir:*

In your letter of May 17th, you state the following:

"In several of the counties, we find that tax rolls are made up by the Assessor in the following fashion:

Lot 1, Block A, Avon Subdivision, etc.

Lot 2, Block A, Avon Subdivision, etc.

Lot 3, Block A, Avon Subdivision, etc.

"When these lists are advertised for delinquent taxes, this same policy must be followed and in hundreds of instances requires two lines for each description. Inasmuch as the name of the subdivision is usually long; too long to go on one line.

"Most of our counties follow the following style:

"Avon Subdivision, being a part of Section——, Tp.——.
Range——, according to a plat thereof, recorded in Plat Book——,
Page——, of the public records of —— County, Florida, etc.

Lot 1, Block A,

Lot 2, Block A,

Lot 3, Block A,

and so forth and so on.

"And when this list is written up to be advertised, a sub-heading of two or three lines is set, then the remainder of the advertisement for that sub-division consists of one line to the lot or parcel, saving hundreds of dollars in every county."

You request my opinion as to whether the second form above set out may be used by the County Assessor of taxes in preparing the County tax roll.

The second form above set out will, when used upon the assessment roll, give sufficient description of the lands so as to warn the owners of the charges thereon, and to advise possible purchasers of what lands are being sold. The lands will be described with such accuracy as to be easily identified and located. It is my opinion that the form may be used by the County Assessor of taxes in preparing the tax roll. See Sections 920 and 921, Compiled General Laws of Florida of 1927; *Grisson vs. Furman*, 22 Fla. 581; *Porter vs. City of Key West*, 69 Fla. 357, 65 So. 175; *Dixon vs. City of Cocoa*, 143 So. 748.

MISCELLANEOUS

January 21, 1933.

BOARD OF COUNTY COMMISSIONERS DOES NOT HAVE
AUTHORITY TO MAKE BLANKET REDUCTION
IN TAX ROLL*Dear Sir:*

I acknowledge receipt of your letter of the 21st instant, transmitting copy of a resolution adopted by the board of county commissioners of Collier County, Florida, at a special meeting held December 24, 1932, by which it was attempted to make a blanket reduction of 50% of the valuation of all property as shown upon the tax rolls of Collier County for the year 1932. I note from your letter that this resolution was adopted by the board of county commissioners as a board of equalizers subsequent to the delivery of the tax books which had been certified to be correct to the tax collector. Your request is for an opinion as to the legality of the action of the board as expressed in said resolution.

The powers of the board of county commissioners as an equalization board are special and limited when acting as such at the time and in the manner prescribed by law.

Section 931 of the Compiled General Laws of Florida provides that the board of county commissioners shall have full power to equalize the assessment of the real estate or personal property of their respective counties, and for that purpose may raise or lower the value fixed by the county assessor of taxes on any particular piece of real estate or item or items of personal property. The board is without authority to make assessments or to change the values fixed by the county assessor, except for the purpose of equalizing the assessments as made by the county assessor, and in making such equalization they are limited to the matter of either raising or lowering such values on particular property. The board is therefore without authority of law to make a general reduction or increase in all the values fixed by the assessor, as this would not equalize the assessment or correct any discriminations made by the assessor in fixing values for taxation purposes.

After the assessment rolls have been examined and completed by the board, as required by Section 934 of the Compiled General Laws, and certified to be correct, the county assessor is required to issue and annex to one of said rolls a warrant as provided by law, a copy of which shall be recorded in the minutes of the board of county commissioners, following which it is provided:

"And the county commissioners shall not have power to change any assessment after the copies have been delivered to the tax collector and Comptroller and the original filed with the clerk of the court."

In *Sparkman vs. State*, 71 Fla 210, 71 So 304, the Court said:

"The county commissioners have no general power in making tax assessments, but only such special and limited power as is specially conferred by statute to secure equalization of tax values.

MISCELLANEOUS

When that power, as specially conferred, is exercised, and final adjournment is taken, their special powers as a board of equalization ceases * * *."

"The special and limited power to equalize assessments having been exercised, and the duty completed, the statute does not either expressly or impliedly give authority to have a subsequent meeting to change assessments fixed in due course of law."

It is therefore my opinion that the action of the board of county commissioners as expressed in the resolution, certified copy of which is attached to your letter, was ultra vires, and does not have the effect in law of changing the valuations placed upon the assessment rolls at the time the same were certified to be correct and turned over to the tax collector, Comptroller, and clerk with the required warrant attached to one copy thereof.

May 18, 1933.

TAX PAYER ENTITLED TO FOUR PER CENT DISCOUNT FOR
THIRTY DAYS AFTER TAX ROLL DELIVERED TO TAX
COLLECTOR PROVIDED DELIVERY MADE AFTER
NOVEMBER 1

Dear Sir:

Section 2 of Chapter 14572, Laws of Florida, Acts of 1929, was intended both for the benefit of the taxpayer and of the State and counties, first, to reward the diligent in the payment of taxes, and secondly, to secure for the government the funds for operating expenses.

The law makes taxes due November 1st, and it is contemplated that the tax rolls can be completed and in the hands of the tax assessors at that time. In view of this Section 2 of Chapter 14572 provides for discounts of 4% if taxes are paid during the month of November. I think it a reasonable construction to be placed thereon that the Legislature intended the taxpayer to have 30 days from the time of the first opportunity for paying taxes, in which to get this discount.

It would be absurd to say that he could not have the discount because he didn't pay his taxes in November, when he was not given the opportunity by reason of no fault of his own. I think the taxpayer is entitled to the discount of 4% if he pays his taxes within thirty days from his first opportunity, to-wit: from the time the tax rolls are placed in the hands of the tax collector for that purpose, regardless as to when that is done. He should not be deprived of this right through no fault of his own.

MISCELLANEOUS

May 19, 1933.

RAILROAD COMPANY REQUIRED TO MAKE RETURN TO
COMPTROLLER OF ALL OF ITS PROPERTY USED IN
CONNECTION WITH OPERATION OF RAILROAD;
MUST RETURN OTHER PROPERTY TO COUNTY
ASSESSOR OF TAXES IN COUNTY WHERE
PROPERTY LOCATED

Dear Sir:

In your letter of the 17th instant, you request my opinion as to the proper construction to be placed on those provisions of Sections 960 and 968 of the Compiled General Laws of Florida, 1927, relating to the duty of railroad companies to make returns for taxation of real property owned by them. I note your statement that these two sections are in direct conflict.

Section 960 requires the railroads to make return to the Comptroller of "the total length of such railroad, the total length and value of such main track, branch, switch and spur track, and side tracks, lots or parts of lots not leased or rented, and terminal facilities, in this State. * * *"

Section 968 requires railroads to return to the county tax assessor "all lands or lots owned and held by them the same as the property of individuals. * * *"

Section 960 of the Compiled General Laws was originally enacted as Section 47 of Chapter 4322, and Section 968 of the Compiled General Laws was originally enacted as Section 49 of Chapter 4322. These two sections have from time to time been amended in other respects, and sometimes by the same Act, but the requirement for making these separate returns has never been changed in any respect, since the original enactment in 1895.

The plain legislative intent is that the railroad company is required to make return to the Comptroller of all lots or parts of lots not leased or rented, and terminal facilities used in connection with the operation of the railroad, as required by Section 47, Chapter 4322. If the railroad owns or holds any land or lots not used by it in connection with the operation of the railroad, then it is required to return this class of property to the county tax assessor, as required by Section 49 of Chapter 4322. This seems clear from the expression used in Section 49 as qualifying the ownership of such land or lots, as follows: "the same as the property of individuals."

In other words, if a railroad company owns or holds any land or lots as an individual might own or hold same, as distinguished from the use made of such land or lots in connection with the operation of its railroad, then such property is required to be returned to the tax assessor of the county. Only that class of real property which is used by the railroad in connection with its operations as a railroad is subject to be returned to the Comptroller.

MISCELLANEOUS

It seems to me, therefore, that there is no conflict between the two provisions of the Act, one requiring return to be made to the Comptroller, and the other requiring return to be made to the assessor, and the legislative intent to continue these separate requirements is evidenced by the fact that these particular parts of the original Act have never been changed, but on the contrary in each amendment thereof have been brought forward as originally enacted.

If a company operates a railroad or street railway in connection with any other business, it is only that part of the real property of such company that is used in connection with and as a part of the operations of its railroad or street railway, which is required to be returned to the Comptroller.

February 2, 1933..

HOMESTEAD ENTRIES

Dear Sir:

I am in receipt of your letter of the 26th ultimo, in which you state that in November 1928, you submitted final proof for homestead, but did not receive the patent until May 1929, and that taxes were levied against the property for 1929. Your inquiry appears to be as to the legality of such assessment.

In reply I beg to call your attention to the following language contained in 22 Ruling Case Law 269, Public Lands 32:

"The power of a state to tax exists as soon as the ownership is changed. Therefore, when the purchaser of land from the United States has paid for it, and received a final certificate, it is taxable property; and this is true although a patent has not yet issued."

From the above it appears that if the issue of the patent was all that remained to be done after submission of final proof in November of 1928, the land was subject to 1929 taxes.

September 9, 1933.

SIGNATURE OF TAX COLLECTOR OF
PALM BEACH COUNTY

Dear Sir:

This will acknowledge receipt of your letter of August 18, 1933, in which you state:

The Governor's commission to the Tax Collector of Palm Beach County shows his name to be "Thomas J. Campbell;" that he signed his name to the Tax Sale Advertisement, which is now being published, as "T. J. Campbell."

You request my opinion as to the proper legal signature to be used on the tax sale certificates which will be issued by Mr. Campbell.

MISCELLANEOUS

Mr. Campbell should at all times sign his name as "Thomas J. Campbell." In having his name printed on the tax sale certificates to be used for the year, I suggest that you use the following wording: "Thomas J. Campbell, (also known as T. J. Campbell)."

May 4, 1933.

NOT AUTHORIZED TO LEVY TAX FOR FIRE CONTROL

Dear Sir:

In your recent letter you ask to be advised whether the Board of County Commissioners of Broward County has the authority to levy a one mill tax on the county at large, and a ten cent tax on muck lands for fire control within the county.

The power of taxation by county officials is one of delegation. Taxes may be levied for any lawful purpose, that is, such purpose as the Legislature may determine and authorize. Beyond this county officials cannot go. There is no question but that the Legislature might authorize the suggested one mill tax on all the taxable property of the county, and an additional tax of ten cents per acre on muck land within the county to produce a fund for fire control. But until such levy is authorized by the Legislature, the Board of County Commissioners is without lawful authority to levy the suggested tax.

November 2, 1934.

DEVOLUTION BY ESCHEAT

Dear Sir:

I acknowledge receipt of your letter of this date, requesting my opinion as to whether the Clerk of the Circuit Court and Tax Collector of Duval County have authority to cancel taxes now levied against the estate of Nancy Hodges, also known as Nancy S. Dilworth, also known as N. H. Brooker, deceased. I understand from your letter and the correspondence attached thereto that this party died intestate August 5th, 1931, and so far as is known to the Administrator of the estate, there are no heirs thereto. The real question, therefore, is whether the property owned by deceased at the time of her death escheated to the State immediately upon her death, and if so, whether the same would thereafter be exempt from taxation so long as owned by the State.

Under the statute of Florida, neither real nor personal property as such escheats to the State, but only the proceeds of the sale of such property when no heir has claimed the same within the time fixed by statute after the owner dies intestate.

Section 5510 of the Compiled General Laws of Florida provides for the sale of real estate after the expiration of two years from the death intestate of the owner, and the proceeds thereof shall be paid to the State

MISCELLANEOUS

Treasurer. Section 5511 provides that upon the confirmation of such sale by the County Judge, the Executor shall execute to the purchaser a deed conveying all the right, title and interest which the said "testate" had in said estate. This indicates that the title to the real property never passes to the State, otherwise, the deed authorized in Section 5511 would convey all the right, title and interest of the State in and to said property.

It follows, therefore, that the property continues to be subject to taxation subsequent to the death of said intestate, and that the taxes should be paid from the proceeds of said sale.

March 30th, 1933

RECEIPTS MAY BE ISSUED FOR PAYMENT SCHOOL TAX ONLY

Dear Sir:

This refers to your favor of March 30th., requesting my opinion as to whether or not you have a right to authorize the issuance of tax receipts to tax payers who want to pay their school tax only.

I find no law against a tax-payer paying all of any particular tax on any of his property. I find no law specifically authorizing this, but it is my opinion that a tax-payer has a right to pay all of any particular levy on his property without paying other levies on the same property. I see no objection to your authorizing the Tax Collector, or, in my opinion he would have the right without any authority from you, to collect all of any particular tax on any particular property, but he must issue a receipt for the taxes when so collected, and such receipt must set out and show what taxes have been paid, of which the receipt is evidence of that payment, this being required under Section 947 of the Compiled General Laws of 1927.

September 27, 1933

TAX COLLECTOR NOT AUTHORIZED TO ACCEPT PAYMENT OF
1932 TAXES ON VALUE AS SHOWN BY 1933 ROLL

Dear Sir:

I have before me a copy of a letter from the Hon. Ruth B. Hylton, Tax Collector of Highlands County, in which she asks the question:

Is she, as County Tax Collector, authorized to accept payment in cash of the 1932 State, County and District taxes on land upon the valuation placed thereon by the Tax Assessor on the 1933 tax roll?

Section 997, Compiled General Laws of Florida, 1927, in dealing with the redemption of land from unpaid or omitted taxes and with the sale of land for non-payment of taxes provides: "When the last assessed valuation against any land to be redeemed or purchased is less than the regular valuation, then the last valuation shall be used."

MISCELLANEOUS

I have previously ruled that a taxpayer may redeem his land from delinquent taxes upon the last assessed valuation if it is less than the regular valuation, and that the 1933 valuation will become the "last assessed valuation" when the Board of County Commissioners, sitting as a Board of Equalizers, complete their work, accept the roll and adjourn as a Board of Equalizers. This ruling was made upon the assumption that there was outstanding a tax sale certificate, in the hands of the State, and that the redemption would be in cash. Ordinarily, and prior to the passage of Chapter 16252, Acts of 1933, (known as the Futch Bill), the tax sale took place prior to the time the Board of County Commissioners would adjourn as a Board of Tax Equalizers, and the tax payer would be required to *pay his taxes as assessed* or let the property go to tax sale and a certificate issue to the State before the current year's assessed valuation would become the "last assessed valuation." The passage of Chapter 16252, Acts of 1933, has delayed the tax sale that would ordinarily have taken place before the assessment on the 1933 tax roll became the "last assessed valuation." If a tax payer has delinquent taxes and wishes to take advantage of the terms of Chapter 16252, Acts of 1933, he must pay his 1933 taxes in cash "in like manner as if no delinquent and unpaid taxes existed against any such lands." (See Sections 3 and 5 and opinion in case of State ex rel. Bowling v. Butts, known as the Futch Case). These 1932 taxes are to be dealt with under the prior general law which permits redemption upon "the last assessed valuation" on the conditions above mentioned. It is my opinion that in the redemption of land from a tax sale certificate and subsequent and omitted taxes, under the Futch Bill, "the last assessed valuation" can not be used, because this law prescribes an exclusive method of dealing with these delinquent taxes.

Section 997, Compiled General Laws of Florida, 1927, which permits the use of the last assessed valuation in the *redemption* of lands from delinquent taxes, presupposes that there is outstanding against the land and in the hands of the State *a tax sale certificate*. This section deals only with "any land to be redeemed or purchased." Land can not be redeemed from 1932 taxes until a tax sale certificate is issued thereon. Prior to the issuance of a tax sale certificate the taxes can only be paid and the land can not be *redeemed*.

It is my opinion that the Tax Collector is not authorized to accept payment of the 1932 State, County and District taxes, on land, upon the valuation placed thereon by the Tax Assessor on the 1933 tax roll.

July 24, 1934

TAXABLE SITUS OF STEAMSHIPS AND AUTOMOBILE FERRIES

Dear Sir:

I have your letter in which you request my opinion as to the taxable situs in Florida of steamships and automobile ferries.

MISCELLANEOUS

Section 909, Compiled General Laws of Florida, Acts of 1927, covers this subject and reads as follows:

"All persons, companies and corporations owning steamships, dredge boats, sailing vessels, wharf boats, barges, and other water craft shall be required to list the same for assessment and taxation in the county in which the same may belong or be enrolled, registered or licensed."

July 28, 1934.

COUNTY BUDGET COMMISSION ORANGE COUNTY MAY CONTROL
LEVY FOR ALL FUNDS SUBJECT TO REVIEW BY
STATE BOARD OF EDUCATION

Dear Sir:

I am in receipt of letters from the Honorable J. C. Palmer, Chairman Orange County Budget Commission, and the Honorable Judson B. Walker, County Superintendent of Public Instruction of Orange County, relative to the Orange County budget, and with particular reference to the budget for schools and school districts. I also have before me copy of letter addressed to you from Warlow, Carpenter and Fishback, Attorneys of Orlando, referring to the same matter.

Chapter 15938, Laws of Florida, Acts of 1933, creating a county budget commission in Orange County, appears to be controlling with reference to all funds of the county, including general school and school district funds, except that the State Board of Education may finally determine the general school tax levy under the provisions of Section 3 (Par. F) of Chapter 16170, Laws of Florida, Acts of 1933, reading as follows:

"To require the Boards of Public Instruction or County Budget Commissions of the several counties of the State of Florida to submit prior to June 15th of any year, for examination by the said State Board of Education their annual budgets and estimates of receipts or expenditures for the ensuing year; and, after examination by the State Board of Education, if it shall determine that the proposed levy is insufficient in any county not proposing to levy the maximum ten mills of ad valorem tax under Section 8 of Article XII of the Constitution, to assure the proper maintenance and support of the public free schools of such county for the ensuing year, the County Board of Public Instruction or County Budget Commission of such County shall amend its proposed budget and estimates in accordance with the direction of the State Board of Education."

Your attention is directed to Section 1, 5, 9, 11, and 13 of Chapter 15938. Section 1 defines "Board" or "Boards" as follows:

MISCELLANEOUS

"'Board' or 'Boards' shall mean and include the Board of County Commissioners, County Board of Public Instruction, and all other Boards, Commissions and Officials of such Counties or of taxing districts situated therein authorized to raise and expend moneys for county or district purposes."

The first paragraph of Section 5 reads as follows:

"Estimates of Revenues and Expenditures to be filed with the County Budget Commission by other County Boards.—It shall be the duty of the Board of County Commissioners, County Board of Public Instruction, County Welfare Board (if any exist in such county), and of each and every other Board in the county to prepare and file with the County Budget Commission on or before the first day of March of each year, but on or before July 1st in the year 1933, an estimate, verified upon information and belief by the officer or officers making the same, setting forth the following:"

"The County Budget Commission is hereby authorized and empowered to change, alter, amend, increase, or decrease any item and total amount or amounts of any estimate of expenditures or receipts prepared or submitted by any board pursuant to this Court, and to fix, determine and adopt a budget of all receipts and all expenditures for every board. * * *"

Section 9 also contains the following language:

"Every such budget so adopted by the County Budget Commission for each such board shall be final and shall have the force and effect of fixed appropriations determined by the authority of law which shall not be altered, amended or exceeded in whole or in part by any such board or officer or member thereof."

Section 11 reads as follows:

"County Budgets to be Recorded by County Boards, etc.—The budgets of receipts and expenditures certified by the County Budget Commission shall be recorded in the minutes of the Board of County Commissioners in full. So much of said county budget as shall pertain to operations of all other boards shall be recorded in their minutes."

Section 13 reads as follows:

"Estimates and Levies of County Board of Public Instruction.—In making its itemized estimates showing the amounts of money required for the conduct and maintenance of the schools of their county for the next ensuing year, and all expenditures in connection therewith, as required by law, the County Board of Public Instruction shall not exceed any item or the total amount fixed, determined and appropriated in and by the county budget as made by the County Budget Commission and certified by it to the County Board of Public Instruction; and the total amount of taxes levied by the County Board of Public

MISCELLANEOUS

Instruction shall not exceed the total amount fixed, determined and appropriated by the County Budget Commisison for such purposes."

Under the above quoted provisions of Chapter 15938, and particularly under the provisions of Section 9 empowering the county budget commission to increase or decrease any estimated item of receipts, as well as expenditures, such county budget commission may control the tax levy for all funds, including general school and school district funds, subject to review and control by the State Board of Education as to the general school fund under the provisions of Section 3 (Par. F) of Chapter 16170 of 1933 above quoted.

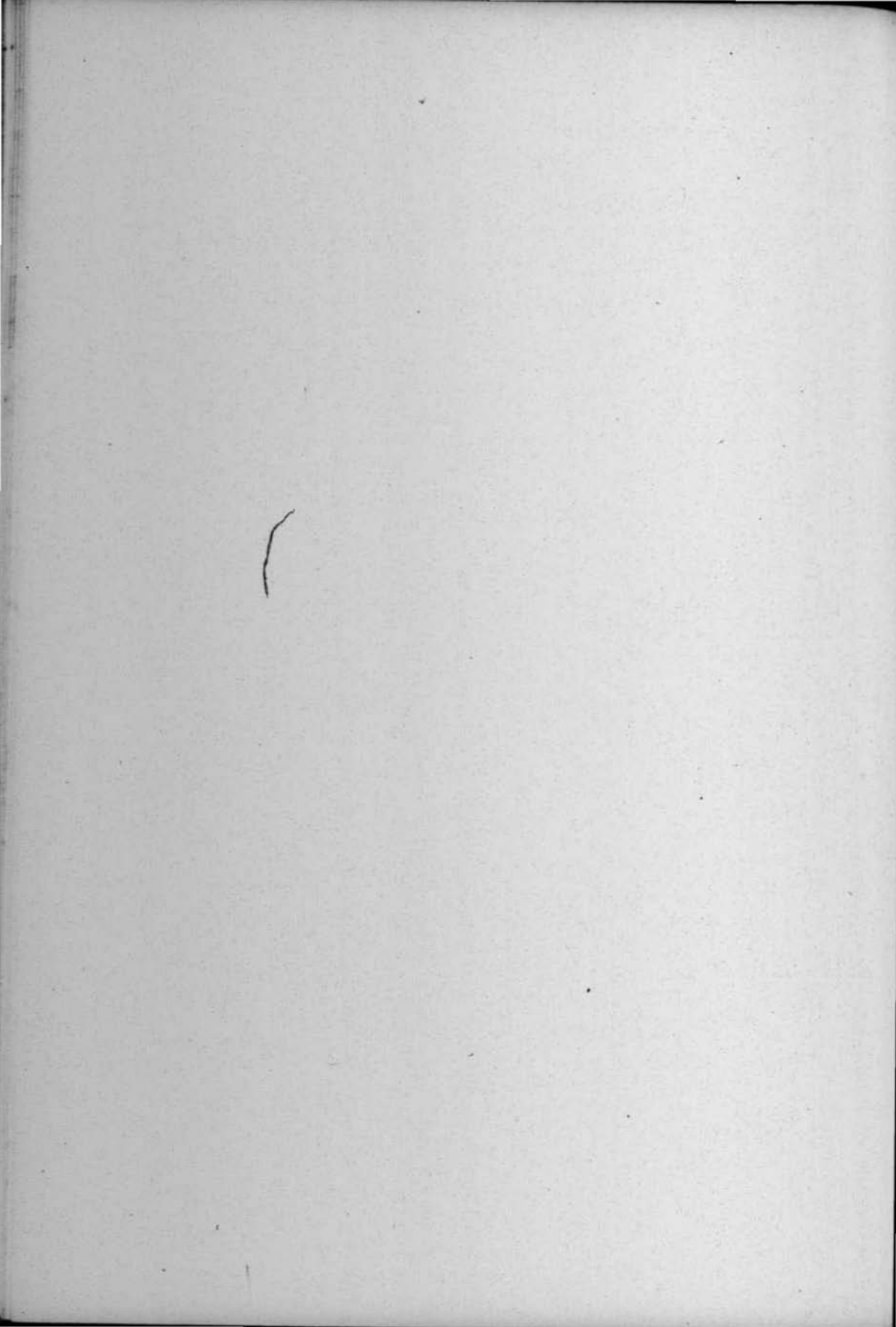
October 19, 1934.

CORPORATION, WHEN DELINQUENT UNDER CHAPTER 14677,
ACTS 1931

Dear Sir:

Replying to your letter of October eighteenth, it is my opinion that a corporation not exempt under Chapter 14677, Laws of Florida, which did not make report and pay this tax, as required by said act, between September, 1932, and September, 1934, was delinquent on January 1, 1934, for the 1933 tax.

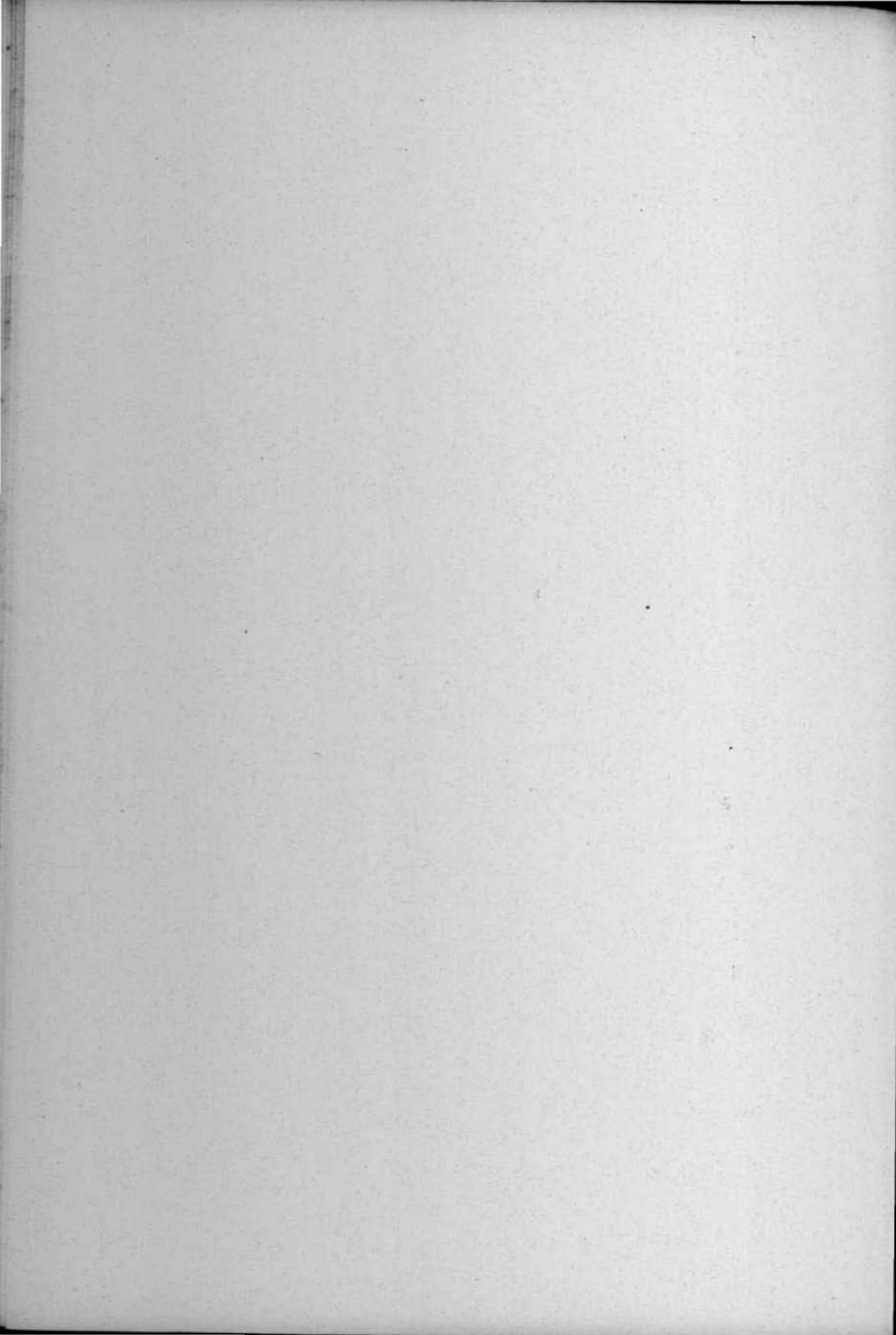
The Supreme Court of Florida, in State *ex rel.* Jacksonville Gas Company, et al, vs. Lee, 150 So. 225, ruled that the tax applied for the period from July 1, 1931, to January 1, 1932, on corporations doing business during that period.



CHAPTER II

STATE BOARD OF ADMINISTRATION

	Page
Section 1. Kanner Bill	153
Section 2. Bonds	161
Section 3. Miscellaneous	189



STATE BOARD OF ADMINISTRATION

SECTION 1

KANNER BILL

December 11, 1934.

PURCHASE OF JUDGMENT ON MATURED BONDS AUTHORIZED
UNDER KANNER BILL*Dear Sir:*

This acknowledges yours of December 7th, in which you advise that pursuant to publication of legally prescribed notice of intention to purchase road bonds of Okeechobee County under Chapter 15891, Acts of 1933, the Board of Administration received a bid from the holder of a certain judgment procured in the Federal Court covering \$51,000 par value of bonds maturing in 1930 and 1933, the judgment being in the sum of \$61,603.86, covering principal, interest, costs, etc. The offer is to sell the same at 35 flat, or the sum of \$17,850.00. You ask whether or not the Board may legally buy the judgment procured on such bonds under the said Act.

It is my opinion that under said Chapter 15891, Acts of 1933, the Board of Administration may purchase such judgment into which has been merged said bonds in the same manner and subject to the same restrictions and requirements as govern the purchase of bonds under the Kanner Bill.

July 3, 1933.

OPTIONAL WITH COUNTY AS TO WHETHER ITS GASOLINE MONEY
SHOULD BE USED TO PURCHASE BONDS UNDER PARAGRAPH D*Dear Sir:*

Answering your letter of June 30, 1933:

1. That under paragraph (d) of House Bill No. 30, Chapter 15891, Acts of 1933 Legislature, and upon authority from the Board of County Commissioners of the county affected, the State Board of Administration will be authorized and directed to purchase *only* the bonds of the particular issue or group of issues to which funds derived from the gasoline taxes have been credited. It is the declared intention of this Act to permit the political division affected to authorize the State Board of Administration to use all funds it may derive from the gasoline taxes in the purchase of its own outstanding bonds and no other bonds.

2. The operation of the provisions of paragraph (d) of House Bill No. 30, Acts of 1933 Legislature, is optional with the Board of County Commissioners of the affected county. In the event the Board of County Commissioners of an affected county should decide that the county will

KANNER BILL

not operate under this Act, then the State Board of Administration would be authorized to continue its present practice under Section 17 of Chapter 14486, Acts of 1929, the same being Section 2470 (17), Compiled General Laws of Florida, 1932 Supplement.

These Sections of the statutes are not in conflict. If the Board of County Commissioners of an affected county elects to call in operation paragraph (d) of House Bill No. 30, then the only money to be affected will be that which is derived from the gasoline taxes. In this event, the Board of Administration will be required to use the gasoline taxes belonging to the county as directed under paragraph (d) of House Bill No. 30 and as directed by the instructions of the Board of County Commissioners. As to all other funds to the credit of the county the State Board of Administration, upon being directed by the Board of County Commissioners, would be authorized to invest them "in any bonds or treasury certificates of the United States or bonds of any county or special road and bridge district in the State of Florida entitled to participate herein." In the event the Board of County Commissioners should elect to operate solely under Section 17, Chapter 14486, Acts of 1929, being Section 2470 (17), Compiled General Laws of Florida, 1932 Supplement, then the State Board of Administration would be authorized to use any funds to the credit of the political division affected, including the gasoline taxes, in the purchase of "any bonds or treasury certificates of the United States or bonds of any county or special road and bridge district in the State of Florida entitled to participate herein."

November 3, 1933.

**PURCHASE UNDER PROVISION OF THIS ACT SHOULD BE FOR
THE BOND AND ALL PAST DUE INTEREST COUPONS**

Dear Sir:

This is in response to your communication of November 2nd, 1933, in which you ask the question whether or not the Board of Administration is authorized to accept, or is justified in accepting, bonds offered for sale under Chapter 15891, Acts of 1933, commonly known as the Kanner Act, when said bonds, being in default of interest, do not have attached all past due defaulted interest coupons, in cases where it is known or can be shown that such missing coupons have been previously turned in to the county in settlement or redemption of tax sale certificates under Chapter 16252, Acts of 1933, commonly known as the Futch Act.

Under paragraph (d) of Section 14 of the said Kanner Act, it is definitely the intent that the Board of Administration be vested with a certain discretion concerning the purchase of these bonds, to the end that the largest amount of outstanding indebtedness may be retired with the least amount of money. This is the whole purpose and spirit of the Kanner Act. This is definitely made to appear by the provision vesting the right in the Board of Administration to reject any and all bids or portions of bids. Furthermore, the Board of Administration must give

KANNER BILL

notice calling for sealed bids, which notice must necessarily state the terms of the offer to be made.

It is a generally accepted and consistent business practice among security dealers that when an offering is made "flat," the price at which the offering is made includes the bond and all defaulted interest coupons.

It is my opinion that the Board of Administration is fully justified and authorized by the terms of the said Kanner Act to follow this consistent business practice, and require the offerings of bonds to be made at a "flat" price, and in the event it is found that the bonds offered do not include all past due defaulted interest coupons (unless similar coupons from other bonds of the same issue are substituted as mentioned in my other opinion of this same date), to deduct the face value of the missing coupons, such deduction to be refunded to the seller if and when the missing coupons are later delivered to the Board of Administration.

The absolute necessity of a consistent policy along this line is required not only in justice to the taxing unit that it may not be required, in effect, to pay twice on the same obligations, but also to secure a uniform and consistent business policy that will operate equally and fairly upon all sellers. Any deviation from this policy will so open the door that in the future you may expect all bonds, even though offered at a "flat" price to be stripped of all past due defaulted interest coupons.

June 22, 1933.

**BOARD SHOULD HOLD GASOLINE MONEY UNTIL DIRECTED
BY COUNTY AS TO ITS DISPOSITION**

Dear Sir:

It is my construction of House Bill No. 30, Chapter 15891, Acts of 1933, known as the *Kanner Bill*, that the Board of Administration may and should hold all moneys coming into your hands, as ex officio county treasurer, from gasoline taxes until the county to which the same is credited by and through the Board of County Commissioners, has adopted its policy with reference to the expenditure of said funds, under said act, or at least until the Board of County Commissioners has had a reasonable time and opportunity to study the situation and formulate and adopt its policy, under said act.

November 7, 1933.

**FUNDS IN HANDS OF BOARD OF ADMINISTRATION AT TIME
KANNER BILL BECAME A LAW, TO THE CREDIT OF A COUNTY
OR ROAD OR SPECIAL ROAD AND BRIDGE DISTRICT THEREIN,
DERIVED FROM SOURCES OTHER THAN THE GASOLINE
TAX, SHOULD BE DEALT WITH IN SAME MANNER AS
THEY WERE PRIOR TO THE ENACTMENT OF SAID BILL**

Dear Sir:

I have your letter stating:

That prior to the time Chapter 15891, Acts of 1933, (herein referred to as the *Kanner Bill*) became a law, the Board of Administration kept

KANNER BILL

all funds belonging to a County or Road or Special Road and Bridge District therein, in one account and no effort was made to keep such account in a manner so that the Board could determine from what source any part of the funds were derived. Upon the Kanner Bill becoming a law and upon being properly advised by a county that it had elected to use the provisions of this law, you separated as best you could all funds held by you for that particular County or Road or Special Road and Bridge District located therein, into Two Accounts as follows:

In the *First Account*, you placed all money on hand when the Kanner Bill became a law, which you were certain had been derived from the Gasoline Tax, and in the *Second Account*, you placed all money on hand when the Kanner Bill became a law, which had been derived from all sources other than the Gasoline Tax; that as to this *Second Account* you are certain that no part of it can be identified as having been derived from the Gasoline Tax, although it is possible that some of the money may have come from that source. You request my opinion upon the question:

What is the duty of the Board of Administration in reference to the funds in the *Second Account* above referred to?

It is my opinion that it is your duty to deal with the funds in the *Second Account* in the same manner as you dealt with funds belonging to a County or Road or Special Road and Bridge District before the Kanner Bill became a law.

July 6, 1934.

USE UNDER CHAPTER 15891, ACTS OF 1933, KNOWN AS THE
KANNER BILL, OF MONIES DERIVED FROM THE GASOLINE TAX

Dear Sir:

On June 15, A. D. 1933, I wrote you in part as follows:

"This refers to your favor of June 13th, in which you request my formal written opinion as to whether or not it can be considered that the terms and provisions of paragraph (d) of House Bill No. 30, 1933 session, are retroactive, that is, apply to gas tax moneys that have been received prior to, and which were on hand in the various road bond accounts at the time of the passage of the Law, as well as subsequent receipts.

"This Bill, to-wit: House Bill No. 30, or what is commonly known as the Kanner Bill was approved May 27th, 1933, and by the terms of the Act became effective as a law as of that date, and it is my opinion that all moneys in the hands of the Board of Administration on that date became subject to the provisions of House Bill No. 30."

On June 22, A. D. 1933, I wrote you as follows:

"It is my construction of House Bill No. 30, Acts of 1933, known as the *Kanner Bill*, that the Board of Administration may and should hold all moneys coming into your hands, as ex officio county treasurer, from gasoline taxes until the county,

KANNER BILL

to which the same is credited by and through the Board of County Commissioners, has adopted its policy with reference to the expenditure of said funds, under said act, or at least until the Board of County Commissioners has had a reasonable time and opportunity to study the situation and formulate and adopt its policy, under said act."

On May 4, A. D. 1934, the Supreme Court of Florida in the case of State of Florida ex rel Florida National Bank at St. Petersburg, etc., Relator, versus State Board of Administration, etc., et al, Respondents, decided that where a Board of County Commissioners has appropriated in its budget for the payment of interest and principal on its bonds (or bonds of a road or road and bridge district therein) the monies to be derived from the Gasoline Tax, it may not withdraw these monies from the purpose for which they were appropriated and use them for any other purpose; that when the Gasoline Tax monies are specifically appropriated for the purpose of paying interest and principal on the bonds, they become as much a part of the interest and sinking fund of the taxing district affected as any monies allocated to and placed into such interest and sinking fund can be, however raised or derived in the first instance.

The decision of the Supreme Court above referred to makes it necessary for me to revise my opinions to you as above set out in reference to your duties under the terms of the Kanner Bill.

Before you can lawfully purchase bonds for any taxing district under a resolution passed by the Board of County Commissioners, you must first satisfy yourself that the Gasoline Tax monies, which you are directed to use under the terms of the Kanner Bill in the purchase of bonds, have not been appropriated in the budget of the taxing district for the purpose of paying interest and principal on its bonds. If, upon investigation, you find that the Gasoline Tax monies received by you for the account of the taxing district for the current fiscal year have been appropriated in the budget for the current fiscal year for the payment of interest and principal on the bonds of the taxing district affected, then it will be your duty to refuse to use this money for the purchase of the bonds of the district, although you have been requested and instructed to do so by resolution by the Board of County Commissioners under the terms of the Kanner Bill. If the Gasoline Tax monies collected during the current fiscal year have not been appropriated for any purpose in the budget of the district for the current fiscal year, or if these monies have been appropriated in the budget for the purpose of purchasing bonds under the terms of the Kanner Bill, then in either event you will, upon proper resolution of the Board of County Commissioners, be authorized to expend those monies in the purchase of the bonds of the taxing district.

The proper and orderly method for the handling of the purchase of bonds under the terms of the County Budget Law (Sections 2302-2308, C. G. L.) and the Kanner Bill, is for the governing board of the taxing

KANNER BILL

district to specifically appropriate in its budget the monies to be received from the Gasoline Tax during the fiscal year to be covered by the budget for the purpose of purchasing bonds of the taxing district affected.

December 5, 1934

**COUNTY MAY RESCIND ACTION TO OPERATE UNDER
KANNER BILL**

Dear Sir:

This is in response to yours of December 3rd, wherein you inquire whether or not a county which, in adopting its budget for the present fiscal year, passed at the same time a resolution appropriating anticipated gas tax receipts for such year for the purpose of purchasing bonds under the Kanner Bill, to-wit: Chapter 15891, Acts of 1933, may during such fiscal year rescind its action and by proper resolution authorize the Board of Administration to use such gasoline moneys for the payment of interest and/or principal on refunding bonds issued to refund the original indebtedness for road and bridge purposes.

It is my opinion that under the terms of said Chapter 15891, a county may lawfully authorize the Board of Administration to proceed as above outlined.

December 5, 1934.

NOTICE FROM BOARD OF COUNTY COMMISSIONERS NECESSARY

Dear Sir:

This acknowledges your inquiry of even date, wherein you ask whether or not under the recent decisions of the Supreme Court in the case of State ex rel DeSoto County vs. Sholtz, you may proceed to pay principal and interest maturities in accordance with Sections 14 and 15 of Chapter 14486, when the county involved has not formally notified the Board of Administration that it elects to proceed under the terms of the so-called Kanner Bill, to-wit: Chapter 15891, Acts of 1933.

It is my opinion that until the Board of Administration is seasonably notified that the board of county commissioners desire to avail themselves of the special privileges given by the said Kanner Act, and the said Board of Administration thereby placed officially on notice of the election of said county commissioners to take advantage thereof by proper resolution exercising the option given the county commissioners by said Act of 1933, the said Board of Administration should proceed to carry out its duties under the original terms of Chapter 14486, Acts of 1929.

Any opinions to the contrary heretofore rendered by me are hereby modified, in view of the said Supreme Court decision.

KANNER BILL

July 24, 1934.

**NOT APPLICABLE TO SPECIAL ROAD AND BRIDGE DISTRICT
WHOSE AFFAIRS ARE NOT MANAGED AND CONTROLLED
BY BOARD OF COUNTY COMMISSIONERS***Dear Sir:*

I have your letter in which you request my opinion "as to whether or not the Board of Administration is authorized, empowered, and required under the provisions of the original 1929 Act (Chapter 14486) to apply all moneys, from whatever source received, (including prorata share of the 3¢ second gas tax) to the payment of the maturing obligations (principal and/or interest) of such Special Road and Bridge Districts whose affairs are not administered by the County Commissioners, by remitting such funds, when the required amount has become available from the several sources, to the designated paying agent or place of payment,—such remittance to be made in due course and in the regular manner, and without any specific and formal request or permission from the governing authority of such Special Road and Bridge District, and/or regardless of any prohibition against doing so which might be received such governing authority, and/or regardless of the fact that one or more of the Counties in which such Special Road and Bridge District is located, may, by formal action of the Board of County Commissioners of such County, have invoked the provisions of the Kanner Bill as to application of the gas tax moneys credited to the road and bridge bond issues of such County and Special Road and Bridge District therein."

Chapter 15891, Laws of Florida, Acts of 1933, known as the Kanner Bill, insofar as it authorizes the purchase of bonds is confined in its scope of operation to a County, Road or Road and Bridge District therein, whose affairs are managed and controlled by the Board of County Commissioners of the County. It does not apply to a Road or Road and Bridge District whose affairs are managed and controlled by any governing authority other than the Board of County Commissioners. Your duties under Chapter 14486, Laws of Florida, Acts of 1929, in reference to paying principal and interest on the bonded indebtedness of a Special Road and Bridge District whose affairs are not managed and controlled by the Board of County Commissioners of the County, are in no manner affected by the Kanner Bill.

It is my opinion that your question should be answered in the affirmative.

August 7, 1934.

**DESOTO COUNTY CANNOT OPERATE UNDER KANNER BILL,
UNDER 1933-34 BUDGET***Dear Sir:*

You have handed me certified transcript of Clerk's estimate of revenue other than from taxes, in connection with the above matter, together

KANNER BILL

with certified copy of estimated budget as well as resolution of the Board of County Commissioners under date of July 12, 1933. The budget is dated the same date as the resolution, and the estimate of revenue is dated July 1, 1933. The resolution is one adopting the provisions of the Kanner Bill.

You will note that in the estimate of revenue, the gasoline tax estimated at \$70,000 is placed under the heading, "County Road Million Dollar Bond Issue"; and on the basis of the assessed valuation, the millages as levied for the various bond issues are hopelessly insufficient without the use of the gasoline tax revenue to supplement them.

It is my opinion that after an examination of the foregoing instruments, in accordance with my opinion of July 6, 1934, and the opinions of the Supreme Court recently rendered in the case of *State ex rel Florida National Bank of St. Petersburg vs. Sholtz et al*, the gasoline tax moneys have been appropriated and cannot be withdrawn so as to allow the county to operate under the Kanner Bill.

August 7, 1934.

**MARTIN COUNTY CANNOT OPERATE UNDER KANNER BILL
UNDER 1933-34 BUDGET**

Dear Sir:

In regard to the above matter, you have handed me certified copy of budget adopted by the board of county commissioners for the fiscal year ending September 30, 1934, together with estimate of revenue filed at the meeting of the board of county commissioners on July 18, 1933.

On August 26, 1933, the said budget was adopted. Thereafter and on October 30, 1933, an attempt was made by the county commissioners by resolution to correct the estimated revenues by eliminating the gasoline tax revenue from the estimated revenue of interest and sinking funds in the said budget, and as so amended, the budget was re-adopted.

The levies made are hopelessly insufficient without the use of the gasoline tax revenue, to meet the maturities required.

Prior to that time and subsequent thereto, and until my opinion of July 6, 1934, I am advised that this county operated under the Kanner Bill.

It is my opinion that the county commissioners were without authority to amend their budget, and that the gasoline tax revenues had been appropriated, and in accordance with my opinion of July 6, 1934, and the opinions of the Supreme Court recently rendered in the case of *State ex rel Florida National Bank of St. Petersburg vs. Sholtz et al*; the gasoline tax moneys cannot now be withdrawn so as to allow the county to operate under the Kanner Bill.

SECTION 2

BONDS

October 7, 1933

STATE BOARD OF EDUCATION MAY ACCEPT REFUNDING ISSUES
IN LIEU OF ORIGINAL—BOARD OF ADMINISTRATION AND
STATE OFFICERS UNDER SEC. 175, 176, 1932 SUP-
PLEMENT TO C. G. L. DO NOT HAVE
THAT AUTHORITY

Dear Sir:

In your letter of September 12, 1933, you state the following:

"(1) The State Board of Education has in the state school funds, bonds issued by several Counties and cities of Florida, which bonds are now in default as to principal or interest, or both principal and interest;

"(2) That the State Board of Administration holds for the account of the sinking funds of various Counties or Special Road and Bridge Districts, bonds issued by several Counties and cities of Florida, which bonds are now in default as to principal or interest or both principal and interest, and that these bonds were received by the Board from the various Counties and Special Road and Bridge Districts as a part of their respective sinking funds which they were required by Chapter 14486, Acts of 1929, to deliver to the Board;

"(3) That the Governor, Comptroller and Treasurer, acting under Sections 175 and 176, Compiled General Laws, 1932 Supplement, hold certain bonds issued by several counties and cities of Florida, which bonds are now in default as to principal or interest or both principal and interest."

You request my opinion on the following questions based upon the facts above set out, to-wit:

(a) Do either of the State Boards or the Governor, Comptroller and Treasurer, under Sections 175 and 176 Compiled General Laws of Florida, 1932 Supplement, have authority to enter into an agreement to accept refunding bonds in lieu of the bonds, of the same political subdivision now held by said board or the mentioned state officers, when the refunding bonds will bear a rate of interest different from the present bonds and will mature at a date different from the present bonds?

(b) If either of the boards or the state officers have authority to accept the refunding bonds, does this include authority to agree that the bonds now held shall bear their pro rata part of the expense of the bondholder's committee?

State Board of Education

The State Board of Education is created by Section 3 of Article XII of the Constitution of the State of Florida. This Section provides that the board "shall have the management and investment of all state school funds under such regulations as may be prescribed by law."

BONDS

Section 755, Compiled General Laws 1927, provides that the board is directed and empowered: "To have the direction and management, and provide for the safe keeping and expenditure of all the educational funds of the State, with due regard to the highest interests of education."

The State Board of Education is given the "direction and management" of all educational funds of the State.

The words "direction and management" give to the Board broad powers. The word management as defined in Volume 5, "Words and Phrases," page 4317, is as follows:

"Management is defined as government, control, superintendence, physical or manual handling or guidance, the act of managing by direction or regulation or administration; as the management of a family, or of a household, or of servants, or of great enterprises, or of great affairs. 'In re Sanders, 36 Pac. 348, 349, 53 Kan. 191, 23 L. R. A. 603; Lewis v. Lewelling, 36 Pac. 351, 352, 53 Kan. 201, 23 L. R. A. 510.

"A statute giving the management of a certain fund to a certain commission implies the power to control the fund. 'It allows the exercise of discretion. It could not be managed without the power to do so, and by requiring the one the other was conferred. To manage money is to employ or invest it. It requires no other management. The word 'manage,' when applied to money placed in the hands of another, is a word of trust and confidence.' Commissioners' Sinking Fund v. Walker, 7 Miss. (6 Row.) 143, 186, 38 Am. Dec. 433."

See also 38 C. J. 324.

State Board of Administration

The State Board of Administration was created by Chapter 14486, Acts of 1929. Section 14 of this Act was amended by Chapter 15891, Acts of 1933.

Section 7 of the act provides that all—securities—shall be held by the State Treasurer as County Treasurer ex officio for the special benefit of the county or district, respectively, by which it was turned over to him, and used solely for the payment of the principal and interest of the bonds for the payment of which the sums was levied.

Section 12 of the act creates a Board of Administration for the purpose of administering the provisions of the act. The Supreme Court of Florida, in discussing the duties and powers of this Board, said:

"Whatever duties it may be required to perform are those fixed by the statute and by the statute alone.

"But, in so far as the state board of administration is concerned, such board is a mere fiscal agent, to which is required to be remitted certain funds for the purpose of its anticipating and providing for the payment of the principal and interest of county and of road and bridge district bonds of the classification specified in the statute."

BONDS

See opinion of the Supreme Court of Florida in the case of *State ex rel Gillespie et al., v. Carlton*, 138 So. 612. (Text 619-620, from which the above quotations are taken.)

This act does not specifically authorize the acceptance by the Board of refunding bonds. It cannot be said that it is necessary for the Board to accept refunding bonds in the performance of its duties under the terms of the act.

The Governor, Comptroller, and Treasurer, acting under Sections 175 and 176 C. G. L. 1932 Supplement.

These sections of the statute authorize the Governor, Comptroller, and Treasurer to sell, at public or private sale, bonds and securities deposited in the State Treasurer's office, as collateral security for the deposits of any public funds, whenever there shall be failure or refusal on the part of the bank depositing such securities, to pay any check drawn by the State Treasurer on such bank, and in case of settlement with a bank in liquidation, these state officials may, if they determine it to be to the best interests of the State, accept such collateral securities in settlement of the account. This statute does not give these State officials authority to dispose of these securities or to convert them into other securities.

It is my opinion that:

1. Your questions as to the State Board of Education should each be answered in the affirmative.
2. Your questions as to the State Board of Administration should be answered, each, in the negative.
3. Your questions as to the Governor, Comptroller, and Treasurer, acting under Sections 175 and 176, Compiled General Laws, 1932 Supplement, should be answered in the negative.

December 13, 1934

**AUTHORITY TO SELL AT PAR OR BETTER LIBERTY BONDS IN A
SINKING FUND ACCOUNT, AND USE PROCEEDS TO PURCHASE
AT LESS THAN PAR BONDS OF THE ISSUE FOR
WHICH THE SINKING FUND WAS CREATED**

Dear Sir:

This acknowledges receipt of yours of December twelfth, wherein you advise that the Board of Administration has received certified copy of resolution adopted by the Board of County Commissioners of Hillsborough County, under date of December 7, 1934, requesting and authorizing the said State Board of Administration to purchase as an investment for the sinking funds of the Million Dollar Hard Surface Road Bond Issue dated October 1, 1913, and due in 1943, twenty-five thousand dollars of the bonds of said issue at ninety-five and interest; and authorizing the Board of Administration to sell sufficient liberty bonds at the market

BONDS

which is par or better, now held in the sinking fund of said issue to provide funds for such purchase.

I am advised that this issue of Hillsborough County bonds is not in default.

The purpose of the transaction is to *retire* a part of the bond issue, thereby reducing the debt representing by the issue, and in doing so to effect a substantial saving for the county. The bonds are not due for approximately nine years, and I know of no reason why the sinking fund, if funds are available, may not purchase at less than par bonds of the issue for which the sinking fund was created.

It is my opinion that the Board of Administration has authority to sell the liberty bonds referred to and use the proceeds from the sale to purchase bonds of the Million Dollar Hard Surface Road Bond Issue of October 1, 1913, in the amount required by the resolution of the Board of County Commissioners. See Section 17 of Chapter 14486, Laws of Florida, Acts of 1929.

This opinion is not in conflict with my opinions of October 7, 1933, January 19, 1934, and October 31, 1934, in that those opinions dealt with the power of the Board of Administration to change the form of an investment in a sinking fund such as accepting refunding bonds in lieu of original bonds held by the sinking fund, and by selling at less than par securities held by a sinking fund and investing the proceeds of the sale in bonds of some issue other than the issue for which the sinking fund was created, while the present case involves the sale at par or better of securities in a sinking fund, and the use of the proceeds of the sale in *purchasing and retiring* at less than par bonds of the issue for which the sinking fund was created.

January 12, 1934.

BOARD HAS AUTHORITY TO SELL LIBERTY BONDS AND INVEST
PROCEEDS IN LIKE SECURITIES

Dear Sir:

This is in response to your communication of January 6, 1933, in which you ask for my opinion as to the authority of the Board of Administration under Chapter 14486, Acts of 1929, with reference to certain United States 4th Liberty Loan Bonds which have been called for payment April 1st, 1934. You ask specifically whether or not the Board has authority to sell such of these bonds as are in the sinking funds of various road and bridge bond issues under your jurisdiction, and with the cash proceeds thereof go into the market and buy an equivalent amount of new United States bonds, provided, of course, that there is no diminution in the par amount of the original investment.

It is my opinion that under the general power of the Board of Administration to invest the funds of any county or special road and bridge district, by and with the approval of the Board of County Com-

BONDS

missioners or the governing body, you are authorized to effect such transaction.

January 19, 1934.

**EXCHANGE FOR REFUNDING BONDS BY BOARD NOT
AUTHORIZED UNDER THE LAW**

Dear Sir:

This will acknowledge receipt of your letter of January 15th, to which you attach a certified copy of a resolution passed by the Board of County Commissioners of Dade County, Florida, on January 2, 1934. The resolution reads as follows:

"WHEREAS, the State Board of Administration holds Fifty Thousand Dollars (\$50,000.00) par value of 1927 Court House and Jail Bonds, Five Thousand Dollars (\$5,000.00) par value 1916 Causeway Bonds, Five Thousand Dollars (\$5,000.00) par value 1916 Bridge Bonds, Eight Thousand Dollars (\$8,000.00) par value 1926 Highway Bonds, for the Sinking Fund of Dade County Road and Bridge Bonds, all of the aforesaid bonds coming within Dade County's Refunding Plan; and,

"WHEREAS, some question has arisen as to the legal right of the State Board of Administration to exchange bonds held for sinking Fund for Refunding Bonds; and,

"WHEREAS, the Board of County Commissioners hold for the Sinking Fund of Dade County Bonds administered by the said Board Road and Bridge Bonds maturing 1938 to 1974 which are administered by the State Board of Administration;

"THEREFORE, BE IT RESOLVED that the State Board of Administration be requested to exchange all bonds now held by them for Sinking Fund that come within Dade County's proposed Refunding Plan for a like number of Dade County Road and Bridge Bonds maturing 1938 to 1974, held by the Board of County Commissioners for the Sinking Fund of bonds administered by the said Board.

"BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the State Board of Administration as soon as practicable."

You request my opinion as to the authority of the Board of Administration to comply with the request set forth in the resolution.

Chapter 14486, Laws of Florida, Acts of 1929, does not specifically authorize the Board of Administration to exchange bonds, as requested by the resolution, and it cannot be said that such action is necessary on the part of the Board in performing its duties under the Act. In the absence of direct legislative authority and in the absence of a Court decision, authorizing such action, it is my opinion that the Board does

BONDS

not have authority to make the exchange of bonds, as requested by said resolution.

See Opinion of November 7th, 1933, Re: Funds in hand when Kanner Bill became a law, as to authority of the Board of Administration to accept refunding bonds.

June 22, 1933.

**RIGHT TO PURCHASE IS VESTED IN GOVERNING BODY
AND NOT IN BOARD**

Dear Sir:

House Bill No. 1305, Chapter 15906, Acts of 1933, authorizes the governing body of the counties, municipalities and certain districts of the certain counties to which said act is applicable to purchase past due bonds, interest coupons, time warrants or other past due obligations issued by "such taxing district" at price below par, using moneys on hand derived from taxes levied for the payment of such obligations. This policy provided that such districts may use for said purpose any other moneys of said district from whatever source derived.

The right to purchase bonds or other obligations under House Bill No. 1305, is confined to such bonds, interest coupons, time warrants, notes or other past due obligations issued by taxing districts within said counties, and does not apply to bonds issued by the county. This discretion is vested in the governing body and not in the Board of Administration.

February 24, 1934.

**BOARD NOT AUTHORIZED TO PAY INTEREST ON ORIGINAL
ISSUE AFTER BEING INSTRUCTED BY COUNTY TO
TRANSFER FUNDS TO REFUNDING ACCOUNT**

Dear Sir:

I have your letter in reference to the \$100,000.00 6% bonds issued by Special Road and Bridge District No. 6, Pinellas County. These bonds are a part of a \$1,000,000.00 issue dated December 1, A. D. 1924. You state that:

The Board of County Commissioners has certified to you that all of the original bonds of this issue have been refunded and you have been directed to close out your account covering these bonds and to transfer all money, on hand to the credit of these bonds, to a fund for the payment of principal and interest on the refunding bonds; that you have followed these instructions and do not at this time have on hand any funds with which to pay interest on bonds of the original issue; \$50,000.00 of these bonds have not yet matured and no question is asked in reference to them; \$25,000.00 of the bonds matured December 1, A. D. 1932, but do not have interest coupons attached and no

BONDS

question is asked with reference to these bonds; \$25,000.00 of the past due bonds matured December 1, A. D. 1933, to which is attached interest coupons due June 1, A. D. 1933, and December 1, A. D. 1933.

You request my opinion as to the authority of the Board of Administration to pay interest on the last mentioned bonds, provided that the holder thereof will accept the 4% interest in settlement of the 6% interest coupons attached to the bonds of the original issue. The interest rate of the refunding bonds is 4%.

The funds on hand which belong to the District are applicable only to the payment of principal and interest on the *refunding bonds* issued by the District.

It is my opinion that the Board of Administration does not have authority to pay interest on the bonds of the original issue of the District.

June 11, 1934.

**OKEECHOBEE COUNTY—PAYMENT OF BONDS OUT OF 1932 TEN
MILL LEVY REQUIRED—MANDAMUS ON RELATION OF
GILLESPIE AND OTHERS**

Dear Sir:

In response to your inquiry as to whether or not the Board of Administration should authorize the payment of bonds numbered 33 and 34, dated February 1, 1927, due February 1, 1930, issued by Okeechobee County out of funds now in the hands of the Board, which funds resulted from the 1932 ten-mill ad valorem tax levy, I assume that these bonds were covered by the original writ of mandamus issued in the case of State ex rel Gillespie vs. Durrance et al, pursuant to which the said ten-mill levy was appropriated to the payment of bonds involved in the writ.

Thereafter a certain stipulation was entered into concerning the purchase of two hundred of the bonds involved in said mandamus proceeding, the purchase to be made of any two hundred of the two hundred fifty-nine listed in a certain schedule as set forth in the resolution of March 5, 1933, of the Board of County Commissioners. The stipulation in no manner releases the liability of the ten-mill levy for 1932, nor does it dismiss the suit and thereby relieve the Board from the operation of the writ itself.

It is my opinion that in the light of the matters as shown by the file which you have given me, the Board is under the duty to carry out the terms of the peremptory writ and pay the bonds so presented.

April 27, 1934.

**BOARD HAS NO AUTHORITY TO DISBURSE FUNDS PURSUANT TO
RESOLUTION OF COUNTY COMMISSIONERS IN
COMPROMISE OF JUDGMENT**

Dear Sir:

This is in response to your communication of April 23, 1934, in which you advise that a judgment creditor owning a judgment based on bonds

BONDS

issued by a special road and bridge district is willing to compromise the same at approximately fifty cents on the dollar; and that the board of county commissioners has requested the Board of Administration to use funds in their hands to the credit of such road and bridge district in payment of the amount necessary to effect such compromise.

As to the gasoline tax moneys involved, it is clear that the Board of Administration has no authority to expend the same for such compromise.

As to the ad valorem tax moneys involved, it is my opinion that these cannot be expended by the Board of Administration to compromise a judgment obtained on bonds of a special road and bridge district any more than the same can be expended for the purpose of buying bonds at depreciated prices. The ultimate result would be the same in either instance, and would result in a preference being accorded the judgment creditor or the bondholder.

It is my opinion that the Board of Administration should not expend such funds except in strict accordance with its prior policy as approved by the Supreme Court, unless and until ordered to do otherwise by proper Court order. Upon an alternative writ of mandamus being served upon the Board, and thus impounding funds in their hands, it would be proper in my opinion, with the concurrence of the Board of County Commissioners or other governing body involved, to effect a compromise of such pending litigation by the payment of a lesser sum than called for by the alternative writ. I suggest, however, that in the event of all proposed compromises of this sort, the matter be submitted to this office for its formal approval, inasmuch as the facts and circumstances, and the terms and conditions of such compromise, will probably differ in each case.

May 12, 1933.

**HOUSE BILL 404, CHAPTER 15907, ACTS 1933, REQUIRES THE
RETURN OF FUNDS LEVIED AND COLLECTED IN CONNECTION
WITH REFUNDING WHEN REFUNDING PROGRAM FAILS**

Dear Sir:

This refers to your favor of May 11th., with which you enclose certified copy of House Bill No. 404, Chapter 15907, Acts 1933, which became a law by approval of the Governor on May 8th, 1933.

This particular Act refers to the disposition of undisposed of funds raised or created for the purpose of applying on the payment of principal or interest, or both, of refunding bonds when such bonds have never been issued. The facts as stated in your letter indicate that Okeechobee County intended to issue refunding bonds. With a view of carrying out this refunding issue a tax was levied, collection made and remitted to your office in the sum of \$6,646.12. That then the refunding issue fell down, or has never been made, and I assume never expects to be made. The question then evidently arose as to what to do with this money, and I

BONDS

assume that House Bill No. 404 was enacted for the purpose of disposing of such funds in this and other counties in like situation.

Under the facts as stated in your letter, it is my opinion, that you, as ex officio County Treasurer of Okeechobee County, if and when the case of the State of Florida on relation of Evalyn Montgomery, Relator vs. Okeechobee County, et al, including yourself, is dismissed without costs to you, that then, under Section 2 of House Bill No. 404, it would become your duty to transmit and return the \$6,646.12 in question to the governing Board of the county or taxing district from whom you received these funds, taking their receipt therefor, and when this is done, it is my opinion that such receipt will be a proper clearance of your office as ex officio County Treasurer of Okeechobee County.

June 25, 1934

**BOARD OF ADMINISTRATION—MARION COUNTY—REMITTANCES
TO PAYING AGENT**

Dear Sir:

This is in response to your communication of June 25, 1934, in which you enclose copy of resolution passed by the Board of County Commissioners of Marion County, which in effect requires the Board of Administration to immediately transfer to New York the balance of funds now on hand, amounting to some \$70,000.00, (other matters in the resolution having been taken care of by proper remittances) and to forward from time to time as hereafter received, all further funds accruing to the credit of certain Marion County Road Bond issues up to October 1, 1934, to be held by the paying bank for the sole purpose of applying the same to the payment of interest maturities due January 1, 1934, February 1, 1934, and July 1, 1935.

It is my opinion that the Board of Administration, or you as County Treasurer Ex Officio, are without legal authority to make such advance remittances; and certainly you are without authority to make such advance remittances and part with control over the money so remitted.

June 27, 1934

**BOARD AUTHORIZED TO SELL SECURITIES AND REINVEST FOR
SINKING FUND ACCOUNT**

Dear Sir:

This is in response to your communication of April 27th, 1934, to which I replied on the next day, and your further request for opinion on the same matter in your letter of June 25, 1934.

You state that you now hold in your possession under Chapter 14486, Acts of 1929, as ex officio Treasurer of Duval County, a large amount of Duval County Road and/or Bridge Bonds, owned as investments upon

BONDS

sinking fund accounts of the several Duval County Road and Bridge bond issues—the majority of which have been bought with sinking fund moneys of such bond issues at prices slightly below par; and that such bonds are of issues other than the funds owning them, and are, therefore, held uncanceled as investments of the sinking fund moneys, drawing interest which is credited to the interest and sinking fund account; and that the bonds are all county-wide general road bond obligations.

The county desires to purchase approximately \$325,000.00 of these road or bridge bonds, so held, at the prevailing market price—the proceeds of such contemplated sale to be invested in the sinking fund accounts in lieu of the bonds so purchased, and be subject to reinvestment from time to time as the opportunity arises.

I assume in this opinion the authority of the county to use the purchase money as indicated—there being no question raised on that score.

It is my opinion that the Board of Administration has authority to convert into cash at prevailing market prices securities held for investment purposes in the sinking fund accounts, and reinvest the proceeds. Such authority is to be exercised in accordance with the highest duty of sound business judgment, and only when deemed to be for the best interest of the unit involved.

While probably not absolutely necessary, I suggest a resolution of the board of county commissioners authorizing the proposed sale as contemplated.

January 19, 1934

**REFUNDING BONDS OF SPECIAL ROAD AND BRIDGE DISTRICT
NO. 6 IN SUMTER COUNTY, MAY BE EXCHANGED FOR
RE-FUNDING BONDS UPON PROPER RESOLUTION
BY COUNTY COMMISSIONERS**

Dear Sir:

I have your letter of January 12th in which you request my opinion as to whether or not the Board of Administration has authority to follow the directions contained in a resolution passed by the Board of County Commissioners of Sumter County, Florida, on January 2, A. D. 1934, in reference to the refunding of the bonded debt of Special Road and Bridge District No. 6 in Sumter County, Florida. Attached to your letter is a certified copy of this resolution and a certified copy of a resolution by the Board of County Commissioners of Sumter County, rejecting the provisions of Chapter 15891, Laws of Florida, Acts of 1933, known as the Kanner Bill.

The resolution recites that the bonded debt of the district has been refunded by the issuance of refunding bonds. The funds of the district are to be used in such manner as to place all bondholders upon a

BONDS

parity with each other and to minimize defaults and to protect the public credit. See State ex rel. Orrall vs. Johnson, et al., 147 So. 254.

It is my opinion that the Board of Administration has authority under Chapter 14486, Laws of Florida, Acts of 1929, to follow the directions contained in the resolution in reference to the refunding of the bonds of Special Road and Bridge District No. 6 in Sumter County.

August 22, 1934

REFUNDING OPERATIONS OCEAN SHORE IMPROVEMENT
DISTRICT; PAYMENT OF COMPENSATION

Dear Sir:

You have handed me certified copy of Resolution passed by the Board of Bond Trustees of Ocean Shore Improvement District under date of April 24th, 1934.

This Resolution provides for the refunding operations incident to refunding the bonds of said District. In such Resolution is authorized a certain agreement by Section 3 of which it is provided that the said Trustees thereby authorize the State Board of Administration and you as Ex Officio Treasurer of Said District to pay to Ocean Shore Improvement District Refunding Agency all funds of said District over and above a reasonable amount necessary to protect said District against default in the payment of the next maturity of interest, the said District having the right to determine such surplus and notify the State Board of Administration and you. By said Resolution it is specifically determined by the said District that there is a present applicable surplus of \$12,000.00 to be applied pro tanto to the retirement of the costs of the refunding program as expressed in said Resolution and contract. It is further provided that delivery of a certified copy of said contract to the said State Board will constitute authority to said Board for the retirement upon presentation and surrender, if paid in full, or for endorsement of partial payment of \$12,000.00 of the certificates issued by the Acting Secretary of said District as bonds of said District are exchanged. Section 2 provides for such certificates and limits reimbursement to the said Agency to 2% of the par value of the bonds described in such certificates.

It is my opinion that under such Resolution and contract, upon presentation of such certificates, you are now authorized to pay said Agency to sum of such certificates so presented and not to exceed \$12,000.00

If any suits are pending against this Fund, you must of course, reserve sufficient moneys in the funds impounded to satisfy the same.

You have also handed me two certificates by the Secretary of the Board of Bond Trustees of the said District, pursuant to Section 2 of the said agreement, and I have examined the same and find that they are sufficient to comply with the said agreement.

BONDS

August 22, 1934.

REFUNDING INDEBTEDNESS, PINELLAS COUNTY

Dear Sir:

You have handed me certified copies of Resolutions by the Board of County Commissioners of Pinellas County with reference to each of the above matters.

The Resolutions each recite that the bonded debt of the particular District, or the county-wide issues have been refunded by the issuance of refunding bonds. The funds of the Districts, or those available for the county-wide issues, are to be used in such manner as to place all bond-holders upon a parity with each other, and to protect the public credit.

In line with my opinion of January 19th., 1934, involving in substance an identical transaction concerning Special Road and Bridge District No. 6 of Sumter County, it is my opinion that the Board of Administration has authority under Chapter 14486, Laws of Florida, Acts of 1929, to follow the directions contained in the said Resolutions herein mentioned.

August 22, 1934.

**PAYMENT INTEREST MATURITIES AUTHORIZED IF SUFFICIENT
SUM REMAINS ON HAND TO ANSWER ALL
WRITS OF MANDAMUS**

Dear Sir:

In response to your oral request for my approval of your contemplated action in disbursing funds necessary to pay coupons due September 1st., 1932 and March 1st., 1933 on bonds of the Atlantic-Gulf Special Road and Bridge Districts, I would state that I understand that you have in ad valorem, gasoline and miscellaneous funds a sum of money sufficient to pay these two maturities, and at the same time reserve sufficient moneys to answer all writs of mandamus at present filed against these funds.

It is my opinion that after reserving ample funds to protect all pending writs, you have authority to disburse the funds in payment of interest maturities as mentioned.

September 11, 1934.

REFUNDING OPERATIONS ST. JOHNS COUNTY

Dear Sir:

This is in response to your communication of the 7th instant, wherein you advise that St. Johns County is undertaking to refund a \$500,000 maturity due January 1, 1936, the same being part of an original issue

BONDS

of county five per cent road bonds under date of January 1, 1926. You further advise that the sinking fund account of this issue has as investments for such fund, \$69,000.00 of the same maturity, \$103,000.00 of the 1946 maturity, and \$217,000.00 of the 1956 maturity, all of the same issue; and also owns \$32,000.00 of another issue dated May 1, 1925, the same being due in 1944.

Deducting the \$69,000.00 of the 1956 maturity, a balance of \$431,000.00 principal will be due January 1, 1936, and the county anticipates between \$75,000 or \$100,000 in cash to apply toward such maturity.

The county commissioners propose offering to the holders of the \$431,000.00 of bonds maturing in 1936, the bonds held in the sinking fund as aforesaid, such exchanges to be made in the order that the 1936 maturities are turned in or applications received. You call attention to the fact that there are only \$352,000.00 of such bonds held in the sinking fund and available for such exchange, which amounts to about eighty per cent, the balance to be made up by a cash payment.

You ask whether or not under the existing laws, there is any legal objection to such exchange.

It is my opinion that there is no objection to such exchange, provided that the bonds are exchanged upon the basis of par, together with all unmatured interest coupons as of the date of exchange; that is, the bonds now in the investment account of the sinking fund should have attached thereto on their exchange only those interest coupons falling due therefor; and those bonds of the 1936 maturity must have attached thereto all unmatured interest coupons.

September 11, 1934.

**CANNOT REPAY FROM FUTURE RECEIPTS SUM BORROWED TO
PAY ON INTEREST MATURITY**

Dear Sir:

This is in response to yours of the 4th instant, wherein you advise that there is a certain issue under date of April 1, 1925, of Manatee County Road Bonds, of which there are now outstanding \$1,494,000; that the next semi-annual interest payment due October 1, 1934, amounts to some \$40,000, and it is anticipated that there will be a shortage of approximately \$10,000 to \$11,000 in the amount required to meet this payment.

The question you ask is whether or not, if the county is able to secure sufficient funds to meet this shortage from some source entirely dissociated with the Board of Administration and the county debt-service funds, such money could be loaned to the fund and repaid from the first receipts, and the coupons paid with this outside money held by the fund, and not cancelled until the loan is paid.

It is my opinion that this matter cannot be handled in the manner suggested. There is not authority for the Board of Administration to in effect borrow sufficient funds to meet a particular maturity, and repay the same from subsequent receipts.

BONDS

I suggest, however, that assuming the county has funds which may legally be used for such purpose, it may purchase coupons to the amount of such available funds, advise the Board of Administration to such effect, and that then the Board of Administration has authority to remit only the difference that is necessary to pay the balance due. Such coupons so purchased would then be held as an investment by the fund which supplied the money with which they were bought.

The question of the availability of such county funds for this purpose is in no manner touched upon by this opinion, but must be determined by the local authorities.

September 12, 1934.

**PURCHASE BY BOARD OF COUNTY COMMISSIONERS
OF SUMTER COUNTY**

Dear Sir:

This is in response to your oral inquiry concerning Sumter County Special Road and Bridge District No. 5 Refunding Bonds—Purchase by Board of County Commissioners, at which time you turned over to us instrument pertaining thereto.

Your specific question is whether or not the Board of Administration may proceed to carry out the terms of a certain resolution passed by the board of county commissioners of Sumter County, Florida, under date of September 4, 1934, a certified copy of which has been furnished to the Board of Administration, authorizing the purchase of certain of the refunding bonds involved at the price named.

Under paragraph 7 of said resolution is contained a provision with reference to the payment to the Sumter County Refunding Agency under their contract. The clerk of the board of county commissioners has already certified concerning the number of bonds refunded and the amount due the refunding agency therefor.

The original resolution pursuant to which the refunding bonds were issued, the same having been passed by the county commissioners under date of December 5, 1933, sets forth in Section 5 thereof the power of the board of county commissioners to purchase out of surplus moneys in the sinking fund, outstanding and unpaid bonds, subject to certain restrictions as therein stated.

The agreement with Sumter County Refunding Agency under date of March 6, 1934, adopted by resolution of the board of county commissioners on the same date, in paragraph 1 thereof, provides the manner of payment for service.

It is my opinion that, assuming there is a surplus as contemplated by Section 5 of the resolution of December 5, 1933, the Board of Administration is authorized to pay to Sumter County Refunding Agency one-third of the amount evidenced by certificates showing earned fees in accordance with Section 7 of the said resolution of September 4, 1934.

BONDS

September 19, 1934.

BROWARD COUNTY NOT AUTHORIZED TO AMEND CERTIFICATION
OF INDEBTEDNESS AS TO ASSUMED INDEBTEDNESS WHICH
CANNOT PARTICIPATE IN GASOLINE FUNDS*Dear Sir:*

This is in response to yours of the 19th, wherein you enclose a resolution by the board of county commissioners of Broward County, reciting that the original reports covering the road bond indebtedness of Broward County (certified to the Board of Administration at the time it commenced operations early in 1930 pursuant to Section 5 of Chapter 14486, Acts of 1929), had failed to include an item representing the past due indebtedness of Broward County to Palm Beach County for the proportionate amount of interest and principal of road and bridge bonds originally issued by Palm Beach County and assumed in part by Broward County at the time of the creation of the latter county out of area formerly embraced in the former county, pursuant to the provision of Section 3 of Article VIII of the Constitution of Florida.

You advise that for a period of between fourteen and fifteen years, to-wit: from 1915 until the Board of Administration commenced operations, these items were advanced and paid from time to time as they matured, by Palm Beach County. Broward County now seeks to amend its original reports as certified to the Board of Administration so as to include therein this past due assumed indebtedness, consisting of \$45,643.72 on account of interest, and \$11,561.06 on account of principal, and to have the aggregate, to-wit: \$57,204.78, participate in the gas tax moneys allocated to Broward County.

You ask whether or not the Board of Administration may comply with this request.

It is my opinion that the Board of Administration may not comply with this request, as this assumed indebtedness is not such an indebtedness as is entitled to participate in the allocation of the gasoline tax moneys. Under the definition of "bond" as given in Section 2 of the said Act of 1929, this assumed indebtedness does not amount to a bond, time warrant, note, or other form of indebtedness *issued* for road purposes or for road and bridge purposes. Furthermore, in the recent case of *State ex rel Johnson et al vs. Sholtz et al*, decided by the Supreme Court on August 4, 1934, Opinion not yet reported, it was decided that moneys raised to meet that portion of a county's indebtedness assumed by another county created out of territory formerly embraced in the indebted county, are not sinking funds which may be properly administered by the Board of Administration.

BONDS

September 19, 1934.

**BOARD NOT AUTHORIZED TO MAKE CHANGE CONTEMPLATED,
MANATEE COUNTY***Dear Sir:*

This is in response to yours of the 19th instant, wherein you enclose a certified copy of resolution adopted by the Board of County Commissioners of Manatee County under date of August 6, 1933, which resolution recites that under Chapter 16252, Acts of 1933, (the Futch Law) the Clerk Circuit Court in and for Manatee County has on deposit in his office certain described bonds of special road and bridge districts or other Manatee County issues; and that the county commissioners, without attempting to exercise their jurisdiction to make an adjustment under Section 7 of said Act of 1933, but for the purpose of making an exchange of said bonds for a like amount of bonds now held and owned by the various sinking funds of the county, are passing such resolution; and which recites that it is deemed for the best interest of the county and its various sinking funds that such exchange be made. The resolution then proceeds to resolve that the said bonds listed be exchanged for other bonds so deposited with the Clerk of the Circuit Court, and that such exchange be completed upon the approval of the State Board of Administration and the Comptroller.

It is my opinion that as to those sinking funds being administered by the Board of Administration under Chapter 14486, Acts of 1929, the Board of Administration is not authorized to make the exchange contemplated by this resolution. This is in line with my prior opinions under date of November 7, 1933, In Re "Board of Administration—Funds in Hand When Kanner Bill Became a Law" and January 19, 1934, In Re "Bonds—Refunding Indebtedness Special Road and Bridge District No. 6, Sumter County."

I am further of the opinion that under Chapter 16252, Acts of 1933, the Clerk of the Circuit Court is not authorized to make such exchange.

June 22, 1933.

**FUNDS RAISED BUT NOT USED FOR RETIRING REFUNDING BONDS
CAN BE USED FOR OTHER LAWFUL PURPOSES, ONLY WHEN
GOVERNING BODY ABANDONS REFUNDING PROGRAM***Dear Sir:*

As I construe House Bill No. 404, 1933, (Chapter 15907), taxes collected for the purpose of applying toward the payment of interest or principal of refunding bonds, can revert back to the county or district to be used by the governing body or board for such general or lawful purpose as in the judgment and discretion of such governing body or board shall seem to the best interest of the county or taxing district, only in case no refunding bonds, for which such taxes were levied, have been

BONDS

issued, and where the proposed issuance of such refunding bonds has been abandoned.

In other words, if it is still the intention of the governing board or body to issue such refunding bonds, for which such tax was levied and collected, I do not think the funds derived therefrom could be spent for any other purpose, unless and until that intention is abandoned.

June 22, 1933.

THE PROVISIONS OF SECTION 1 OF CHAPTER 15888, ACTS OF 1933 ARE MANDATORY, SECTION 2 OF SAID ACT REQUIRES A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS

Dear Sir:

The provisions of Section 1 of Senate Bill No. 902, Chapter 15888, Acts of 1933, are mandatory and in my opinion do not require a resolution of the Board of County Commissioners, as is required under provisions of House Bill No. 30, Chapter 15891, Acts of 1933.

Section 2 of the Act requires a resolution of the Board of County Commissioners, as to the amount of money necessary for the payment of interest coupons upon, and the creation of a sinking fund for the ultimate retirement of bonds of said county, etc., and a copy of said resolution must be delivered to the Board of Administration.

The demand of the Board of County Commissioners upon the Board of Administration to pay over to the Board of County Commissioners all funds coming into its possession, or into its control, to the credit of or allocated for use in Jefferson County in excess of the amounts determined, as provided in Section 2 of the Act, should be by resolution of the Board of County Commissioners.

June 22, 1933.

THE PROVISIONS OF SECTION 1 OF CHAPTER 15890, ACTS 1933, ARE MANDATORY—SECTION 2 OF SAID ACT REQUIRES A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS

Dear Sir:

The provisions of Section 1 of Senate Bill No. 857, Acts of 1933, Chapter 15890, are mandatory and in my opinion do not require a resolution of the Board of County Commissioners, as is required under provisions of House Bill No. 30, Chapter 15891, Acts of 1933.

Section 2 of the Act requires a resolution of the Board of County Commissioners, as to the amount of money necessary for the payment of interest coupons upon, and the creation of a sinking fund for the ultimate retirement of bonds of said county, etc., and a copy of said resolution must be delivered to the Board of Administration.

BONDS

The demand of the Board of County Commissioners upon the Board of Administration to pay over to the Board of County Commissioners all funds coming into its possession, or into its control, to the credit of or allocated for use in Gadsden County in excess of the amounts determined, as provided in Section 2 of the Act, should be by resolution of the Board of County Commissioners.

December 19, 1934.

**AUTHORITY OF BOARD OF ADMINISTRATION TO COMPLETE
TRANSACTION WITH REFUNDING AGENCY, CITRUS COUNTY**

Dear Sir:

This acknowledges your letter of the 19th instant, with the following enclosures: Certified copy of an agreement entered into by R. E. Crummer and Company, party of the first part, and Board of County Commissioners of Citrus County, Florida, party of the second part, dated the 17th day of December, A. D. 1934, and attested copy of resolution of the Board of County Commissioners of Citrus County, Florida, dated December 17, 1934.

Certificate of the Clerk of the Circuit Court of Citrus County, Florida, dated the 18th day of December, 1934, showing the amount of original bonds of Citrus County exchanged for the refunding bonds, and also the amount which R. E. Crummer is entitled to be paid on account of services and expenses in connection with the exchange of said bonds, to-wit: the sum of \$8,080.00.

Certificate of the Clerk of the Circuit Court of Citrus County dated the 18th day of December, 1934, showing that to that date \$1,213,000 of Citrus County, Florida, original bonds had been exchanged for refunding bonds, and that R. E. Crummer is entitled to the sum of \$24,260, being two per cent of the par value of said bonds, the said sum to be paid in accordance with the contract of December 17, 1934.

This presents the same question of authority on your part on which I advised you by letter dated May 30, 1934, with reference to Sumter County Special Road and Bridge District No. 6 Refunding Bonds, dated July 1, 1932.

Based on my said letter and opinion of May 30, 1934, it is my opinion that assuming there is on hand to the credit of Citrus County Road and Bridge Bond funds including gasoline tax as contemplated in said resolution of the Board of County Commissioners of Citrus County dated December 17, 1934, the Board of Administration may complete the transaction as requested by the Board of County Commissioners of Citrus County as contemplated in said resolution.

BONDS

November 10, 1934.

BOARD NOT AUTHORIZED TO SELL BONDS OF SINKING FUND FOR
LESS THAN PAR VALUE*Dear Sir:*

Since my return to the office, I have considered the contents of your letter of November 2nd, in reference to the authority of the Board of Administration to accept less than par for the Drainage District Bonds now held in the sinking fund account of the Manatee County 1909 Road Bonds.

I note you suggest that you can probably obtain the consent of all of the holders of the 1909 Bonds, and you request my opinion as to whether or not this will be sufficient to permit the Board of Administration to sell the Drainage District Bonds now held in the sinking fund.

The Supreme Court in the case of *State ex rel Pinellas County versus Sholtz*, 155 So. 736, held that the Board of Administration is a statutory trustee. The Board is not only trustee for the interest of the bondholders but also is trustee for taxpayers. In view of this fact, it is my opinion that it would be necessary to go further than getting the consent of the holders of the 1909 bonds. The Supreme Court in the above mentioned case suggested a method of procedure which I think should be followed in your case.

Please advise me whether or not you desire that a suit be filed such as was suggested in my letter to you of October 31st.

November 9, 1934.

BOARD HAS NO AUTHORITY TO ACCEPT LESS THAN PAR VALUE
FOR BONDS OR COUPONS IN SINKING FUND*Dear Sir:*

I have your letter of the 7th instant, enclosing certified copy of the resolution of the Board of County Commissioners of Volusia County, Florida, requesting the Board of Administration to sell \$3,000 of Holly Hill Delinquent Coupons attached to the bonds of Holly Hill owned by Halifax Special Road and Bridge District of Volusia County, Florida, and held by the Board of Administration to the credit of the sinking fund of said Halifax Special Road and Bridge District.

In your letter you request my opinion as to whether the Board of Administration has authority of law to accept less than par for such past due coupons. It is my opinion that the Board does not have such authority.

District or county bond sinking funds are authorized to be invested in certain bonds for the purpose of augmenting such fund by interest at a rate higher than that which such funds would draw if deposited in saving banks. It is only when bonds cannot be acquired (by the use of sinking funds) to advantage that the sinking funds are authorized to

BONDS

be deposited in the savings department of banks. This clearly indicates a two-fold legislative intent; first, that the funds shall be conserved, and, second, that of augmentation.

It may be unfortunate in this or similar instances that the Board has no authority to accept less than par for such coupons or bonds, but such is not its responsibility. The duties and responsibilities of the Board are statutory, and beyond this it has no discretion.

October 31, 1934.

**BOARD NOT AUTHORIZED TO CHANGE FORM OF INVESTMENT IN
SINKING FUND ACCOUNT**

Dear Sir:

I have your letter of October 24th, to which is attached a copy of the letter from Honorable K. B. O'Quinn, Clerk of the Circuit Court of Pinellas County. Mr. O'Quinn's letter reads in part as follows:

"In the sinking fund investments of Special Road and Bridge District No. 1 you are holding some bonds of Special Road and Bridge District No. 13 as an investment, that matured January 1, 1934.

"The County Commissioners of Pinellas County would like to exchange ten refund Road and Bridge District No. 1 Bonds for the District No. 13 Bonds held by you, the purpose being to cancel out the refunded No. 1 Bonds when received by you reducing the debt of the district by that amount.

"The records show that the District No. 13 bonds were purchased at approximately sixty cents and if an exchange of this kind as above outlined cannot be effected we would like to authorize the sale of the District No. 13 bonds provided the District No. 1 bonds can be purchased and immediately cancelled."

You request my opinion as to whether or not the Board of Administration has authority to carry out the request of Mr. O'Quinn as above set forth.

On October 7, A. D. 1933, and on January 19, A. D. 1934, I rendered opinions to the effect that the Board of Administration does not have authority to surrender bonds of an original issue held in a sinking fund account in exchange for refunding bonds of the political division which issues the original bonds. These opinions were based upon my construction of Chapter 14486, Laws of Florida, Acts of 1929, and Chapter 15891, Laws of Florida, Acts of 1933.

The Board of Administration is a statutory trustee, and has only such powers as are expressed in the statutes. The Acts above referred to do not specifically authorize the Board of Administration to change the form of investment held by a sinking fund account.

It is my opinion that the Board of Administration does not have

BONDS

authority to exchange or to sell bonds as requested by Mr. O'Quinn. See case of State ex rel Pinellas County et al vs. Sholtz, Governor, et al, 155 So. 736.

My opinion dated June 27, A. D. 1934, in re Duval County, and referred to in your letter of October 24th has been recalled and cancelled.

October 31, 1934.

BOARD OF ADMINISTRATION NOT AUTHORIZED TO ACCEPT LESS
THAN PAR FOR BONDS HELD IN SINKING FUND

Dear Sir:

I have your letter of October 22nd, to which is attached a letter from the Honorable J. Ben Fuqua, County Attorney of Manatee County, Florida, together with certain other papers.

The facts as obtained from your letter and the papers attached thereto, seem to be as follows:

You now hold in the sinking fund account of Manatee County, 1909 Road Bonds, certain bonds issued by Tampa Gap Drainage District and Oneco Drainage District. These drainage districts have entered into an agreement with the Reconstruction Finance Corporation, whereby each district will be able to obtain certain funds in exchange for refunding bonds, provided the districts are able to liquidate all of their outstanding bonds. It is now proposed by the board of county commissioners that the Board of Administration accept less than par for the bonds of these drainage districts which are held by the sinking fund account of the Manatee County 1909 Road Bonds. It appears that there has been no default in the payment of principal or interest on the Manatee County 1909 Road Bonds. Upon receipt of the money from the liquidation of the bonds issued by the drainage districts, the board of county commissioners propose that the Board of Administration will invest these funds in Manatee County Road Bonds.

You request my opinion as to whether or not the Board of Administration has authority to accept less than par in liquidation of the drainage district bonds above referred to, which are now held in the sinking fund account of the Manatee County 1909 Road Bonds.

On October 7, A. D. 1933, and on January 19, A. D. 1934, I rendered opinions to the effect that the Board of Administration does not have authority to surrender bonds of an original issue held in a sinking fund account in exchange for refunding bonds of the political division which issues the original bonds. These opinions were based upon my construction of Chapter 14486, Laws of Florida, Acts of 1929, and Chapter 15891, Laws of Florida Acts of 1933.

The Board of Administration is a statutory trustee, and has only such powers as are expressed in the statutes. The Acts above referred to do not specifically authorize the Board of Administration to exchange the form of investment held by a sinking fund account.

BONDS

It is my opinion that the Board of Administration does not have authority to accept less than par for the drainage district bonds above referred to, which are now held in the sinking fund account of the Manatee County 1909 Road Bonds. I might state further that it is also my opinion that the Board of Administration does not have authority to change the form of an investment held by a sinking fund account. See opinion in case of State ex rel Pinellas County et al vs. David Sholtz, Governor, et al, 155 So. 736.

October 26, 1934.

BOARD AUTHORIZED TO PAY LESS THAN PAR VALUE FOR BONDS

Dear Sir:

Replying to your letter of October 25, regarding McCall Special Road and Bridge District No. 5, Charlotte County, to which is attached copy of a letter from R. E. Kurtz of Fort Myers, dated October 19, 1934, I beg to advise that the Board of County Commissioners have no control over funds in the hands of the Board of Administration, pursuant to Chapter 14486, Acts of 1929, to the credit of the county or any district thereof, advisory or otherwise, except when and to the extent that such county has elected to go under the Kanner Bill.

In other words, when the County has not directed the gasoline tax moneys to be used in the purchase of bonds under the Kanner Bill, the County Commissioners cannot bind the Board of Administration as to the manner in which the funds to the credit of the county or any district therein shall be used in the payment of principal or interest. However, I know of no reason why the Board of Administration cannot pay less than par for bonds or coupons of such county or district, if the bondholder is willing to accept an amount less than par, provided the Board does not prefer such bondholders over those who require full payment as to bonds of the same issue and maturity.

November 28, 1934.

**INVESTMENT OF FUNDS OF SPECIAL ROAD AND BRIDGE
DISTRICT IN BONDS OF ANOTHER ROAD AND BRIDGE
DISTRICT—PRICE AT WHICH SUCH BONDS MAY BE
PURCHASED FOR SUCH INVESTMENT SHOULD NOT
BE GREATER THAN MARKET VALUE**

Dear Sir:

This acknowledges yours of the 26th instant, in which you ask whether or not the Board of Administration may purchase bonds of a special road and bridge district with funds of another special road and bridge district, such purchase to be made for investment purposes of such funds, at a price of par plus accrued interest, when such Board

BONDS

knows that the present market value of such bonds is from 55 to 60 rather than par.

It is my opinion that the Board of Administration should adhere to its prior position based upon a high degree of business prudence and judgment, and that they are not warranted in paying a higher price for particular bonds for investment purposes, than they would have to pay for the same or similar bonds purchased in the open market.

It is my opinion that the administration of the funds of a particular road and bridge district should be administered solely with reference to the best interest of the specific funds of that district, and that such trust funds may not be jeopardized or depreciated, because an actual or assumed benefit may result to other road and bridge districts within the same county or to the county itself.

I therefore answer your question in the negative.

December 20, 1934.

CAN NOT PURCHASE MATURED COUPONS AS AN INVESTMENT
FOR COUNTY OR TAXING DISTRICT

Dear Sir:

In your letter of the 20th instant, you state that by direction of the Board of Administration you are referring to me copy of a letter from the Chairman of the Board of County Commissioners of Manatee County, dated December 17th, inquiring if it will be possible or permissible to use surplus funds in any road bond account for the purpose of purchasing (as an investment) \$412.50 of coupons due December 1, 1934, detached from \$15,000 Manatee County Sugar Bowl Road Bonds dated June 1, 1926, owned by Mill Owners Mutual Fire Insurance Company of Des Moines, said \$412.50 of coupons being a part of a total maturity of interest due December 1, 1934, of \$5,500 for the payment of which funds are not now available, but it is contemplated that such coupon maturity may be paid in full by next Spring.

Your question is:

May the Board of Administration properly and legally purchase said \$412.50 of coupons (now past due but payment of which is anticipated in the next few months) as an investment for account of any road bond fund of said county which has funds available over and above its own current requirements?

It is my opinion that this cannot legally be done. I do not think the statute authorizes the investment of any funds to the credit of any county or special road and bridge district in the hands of the State Treasurer as County Treasurer Ex Officio in defaulted bonds or coupons, but I think the statute contemplates an investment as such only in unmatured bonds. The proposed transaction would in my opinion amount to payment as distinguished from an investment, by reason of the fact that such coupons along with others of equal dignity are now past due.

BONDS

November 23, 1934.

METHOD OF PROCEDURE FOR DETERMINING AUTHORITY OF
BOARD OF ADMINISTRATION TO CHANGE FORM OF
SECURITIES HELD BY IT AS STATUTORY TRUSTEE*Dear Sir:*

This will acknowledge receipt of your letter of November 20th, stating that you have been advised by Mr. Knott, as State Treasurer, County Treasurer ex officio, that under the existing law he would not have authority to exchange bonds issued by the town of Boynton and belonging to one of the sinking funds being administered by the Board of Administration, for refunding bonds issued by the town of Boynton. You ask if there is any method which can be pursued whereby the refunding bonds can be exchanged for the original bonds.

The Supreme Court of Florida in the case of State ex rel Pinellas County et al. vs. Sholtz, Governor, et al., 155 So. 736, said that the proper course of procedure in such a case "is for the State Board of Administration, by bill in equity filed by it in its capacity of statutory trustee, to submit to the approval of a chancellor the propriety of a desirable and authorized reinvestment of sinking funds in any new forms of securities, such as by the exchange of original for refunding bonds where the circumstances and the law controlling the case may warrant."

The Board of Administration has not yet decided whether it will file a bill in equity in the various matters where refunding bonds are offered in exchange or original bonds held by one of the sinking funds being administered by the Board. I presume, however, that each case will have to be presented to the Board as it arises.

November 13, 1934

EVIDENCE OF WHETHER GASOLINE FUNDS HAVE BEEN BUDGETED
BY COMMISSIONERS TO BE DETERMINED BY BOARD*Dear Sir:*

In your letter of the 29th ultimo you request my opinion as to whether the documents attached thereto may be considered as sufficient evidence to satisfy the Board of Administration that Hernando County, Florida, did not appropriate its anticipated gas tax receipts for the fiscal year 1933-34 for debt-service requirements of its road bonds.

In my letter to you of July 6, 1934, I said that before you can lawfully purchase bonds under the Kanner Act you must first satisfy yourself that the gasoline tax moneys have not been budgeted for the purpose of paying interest and principal of bonds for the particular fiscal year involved. It seems to me, therefore, that the question of what proof you will require that the gasoline tax funds were not anticipated and budgeted for debt-service for the particular year is largely a matter for the Board's determination.

Among the documents submitted with your letter is a purported

BONDS

copy of a telegram from the Chairman of the Board of County Commissioners of Hernando County, dated July 16th, stating that the county commissioners for the fiscal year of 1933-34 did include in the estimate for revenue and receipts from sources other than taxes to be levied \$45,000 from the Gas Tax. If this telegram is true, then this amount of gasoline tax money was anticipated and appropriated for that fiscal year.

On the other hand, you have an affidavit signed by H. S. Simmons, Chairman of the Board of County Commissioners, and H. C. Mickler, Clerk of the Circuit Court, dated August 7, 1934, in which it is averred that the county commissioners in levying the ad valorem tax millage for interest and sinking fund for the fiscal year 1933-34, took no consideration of the "anticipated revenues from the gas tax for the purpose of paying interest and principal on said bond issue." They attach to said affidavit, certified copy of excerpts from the proceedings of the county commissioners of August 7, 1934, as to the estimated revenue and receipts from sources other than taxes to be levied, in which there is no reference made to nor inclusion of gas tax funds.

If this affidavit is true, then the gas tax for the fiscal year 1933-34 was not anticipated or budgeted for debt-service for that fiscal year. It appears that Mr. Simmons, the Chairman of the Board of County Commissioners of said County, repudiated the purported telegram of July 16, 1934, by his affidavit of August 7, 1934. It still remains, however, a question of whether the proof offered is satisfactory to the Board.

October 11, 1934

**INTEREST IS NOT TO BE PAID ON BOND WHEN TAKEN IN
UNDER THE FUTCH BILL**

Dear Sir:

This is in response to your communication of October 10th, referring to my opinion under date of September 28, 1934.

I did not mean to imply by the last sentence therein that interest is to be paid upon bonds taken in under the Futch Bill and held by the Clerk of the Circuit Court.

In your letter you have reviewed the setup which you are now using in connection with the Board of Administration and by which, as soon as you are properly notified that a bond has been taken in under the Futch Bill, in arriving at the amount of interest and principal requirements, you reduce accordingly such requirements for semi-annual interest payments on the issues of which such bonds are a part, and the principal amounts of such bonds are eliminated in calculating the requirements of such issues for principal due to be paid in the year or years of maturity.

It is my opinion that this is correct, and that it was the definite intention of the Futch Bill to take out of circulation such bonds, and that relief may not be procured from the operation of this Act unless the

BONDS

taxing unit is relieved from making requirements for principal and interest on the bonds so taken in.

I do not mean by this opinion to infer that in the final adjustment between the taxing units involved, it would not be proper to calculate the interest on the bond or bonds in determining the basis for such settlement.

September 28, 1934

CLERK HAS NO AUTHORITY TO TRANSFER INTEREST RECEIVED
UNDER FUTCH BILL

Dear Sir:

This will acknowledge receipt of your letter of September 19th, in which you state the following, to-wit:

"I, as Treasurer of the State Board of Administration and as Ex-Officio County Treasurer of Highlands County, am in receipt of a remittance of \$32.25 from the Clerk of the Circuit Court of Highlands County for credit to county wide and special district road bond interest and sinking fund accounts of such County, which the Clerk reports as 'interest collected on bonds accepted under Futch Bill from effective date to April 30, 1934.'

"In the present instance as herein referred to, it is apparent that the Highlands County Clerk has detached and collected maturing coupons from bonds accepted by him in the redemption of taxes under the Futch law and has remitted to this office a proportionate amount thereof for account of the road and bridge bond interest and sinking funds, calculated, we presume, on the basis of their interest in or ownership of the bonds themselves from which such coupons were detached, and as stated, we are uncertain as to whether the remittance should be accepted, and desire your opinion on this point."

Section 7 of Chapter 16252, Laws of Florida, Acts of 1933, known as the Futch Bill, requires: " * * The bonds or matured interest coupons received in redemption of such lands shall be held by the Clerk of the Circuit Court uncanceled and proper account shall be kept thereof for adjustments of account between the County and such other taxing units or districts as may be interested in it such time or times as the Board of County Commissioners may direct."

It is my opinion that you do not have authority to receive from the Clerk of the Circuit Court of Highlands County the money referred to in your letter as this money is to be considered as a part of the bonds accepted by the Clerk under the Futch Bill. The clerk does not have authority to dispose of any money collected as interest on such bonds but he must hold it in the same manner as he is required to hold bonds received under the Futch Bill.

BONDS

December 21, 1934

**BOARD OF ADMINISTRATION AUTHORIZED TO ACT UNDER
CHAPTER 14486**

Dear Sir:

This acknowledges your letter of the 15th instant, with attached Exhibits A, B, C, D, E, F, and G, the first five of which are resolutions adopted by the Board of County Commissioners of Bradford County, Florida, to effectuate the refunding of bonds of said county.

The sixth of said exhibits is a certificate of the Clerk of the Circuit Court of Bradford County. The transaction presented by these exhibits is practically the same as those involved in Citrus County, on which I gave you an approving opinion dated November 6, 1934.

It is therefore my opinion that the Board of Administration may under Chapter 14486, Laws of Florida, Acts of 1929, take such action as is necessary to effectuate the intent and purpose outlined in the said exhibits.

April 19, 1933.

**REFUNDING—CHAPTER 15772 AUTHORIZES ISSUANCE, AND
APPROVAL OF BOARD IS NOT NECESSARY**

Dear Sir:

With references to the matter contained in your letter of the 15th instant, relative to the issuance of refunding bonds for Dade County, I respectfully call your attention to Chapter 15772, Laws of Florida, Acts of 1931, authorizing and empowering the counties, municipalities, special road and bridge districts, special tax school districts, and other taxing districts in the State to issue refunding bonds without any proceedings, publications, notices, consents, or approval.

It is therefore unnecessary for the Board of Administration to either approve or disapprove of the resolution submitted with the letter of Messrs. Hudson and Cason, County Attorneys, dated April 12, 1932. However, any approval or disapproval expressed by the Board as to said resolution would not affect the same in any way, nor the right of the county to issue refunding bonds as therein proposed, nor would such approval or disapproval affect the validity of such issue of refunding bonds.

SECTION 3

MISCELLANEOUS

October 5, 1934.

MANDAMUS PROCEEDINGS—AD VALOREM TAX MONEY
RELEASED WHEN SUIT DISMISSED*Dear Sir:*

This acknowledges receipt of yours of the 3rd instant, wherein you enclosed certified photostatic copies of the motion and order dismissing the above cause.

This was a mandamus proceeding to reach certain ad valorem tax moneys, and you ask whether or not such moneys are released by the dismissal of this cause.

It is my opinion that such moneys are released and may be treated as if said cause had never been filed.

October 5, 1934.

MANDAMUS PROCEEDINGS—CONCURRENT SUITS IN TWO JURIS-
DICTIONS ON SAME COUPONS—BOARD ONLY REQUIRED TO
HOLD ENOUGH FUNDS TO SATISFY COUPONS INVOLVED*Dear Sir:*

In your letter of the 2nd instant, you state that two actions of mandamus have been brought and are now pending by State ex rel Sovereign Camp Woodmen of the World vs. Board of Administration and Pinellas County Board of County Commissioners, one in the Circuit Court in and for Pinellas County, and the other in the Circuit Court of Leon county, Florida.

You state that the amount of the coupons involved is \$5,000.00, and that the identical items are involved in these two actions. You also state that as a result of the service of the alternative writ of mandamus in these cases, there was and now is impounded of the ad valorem tax funds on hand applicable to Pinellas County, the sum of \$10,000.00.

You ask to be advised whether the Board may release and place back in the interest and sinking fund account of Pinellas County Road Bonds, \$5,000.00 of the \$10,000.00 now impounded, reserving only \$5,000.00 subject to the outcome of either of these actions.

I beg to advise that this may be done, provided the two actions involve the same coupons. All that is necessary or required is to hold enough of the funds in question to pay all the coupons involved, in event the relator prevails.

MISCELLANEOUS

July 2, 1934.

SUMMERS-WILCOX MUNICIPAL BANKRUPTCY ACT—STATUS
STATE BOARD OF ADMINISTRATION*Dear Sir:*

This is in response to your communication of June 19, 1934, in which you ask for the status of the State Board of Administration under Section 80, Subdivision K of the so-called Summers-Wilcox Municipal Bankruptcy Act. This chapter reads in part as follows:

"* * * whenever there shall exist or shall hereafter be created under the law of any State, any agency of such State authorized to exercise supervision or control over the fiscal affairs of all or any political subdivision thereof, and whenever such agency has assumed such supervision or control over any political subdivision no petition of such political subdivision may be received hereunder, unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

It is my opinion that the State Board of Administration in line with the numerous decisions of the Supreme Court of Florida as to its status and duties, is not an agency of the State of Florida "authorized to exercise supervision or control over the fiscal affairs" of the political subdivisions involved in the Board of Administration Act. The said Board of Administration is a fiscal agent or disbursing trustee merely; it cannot enforce levies; it cannot control expenditures; and in line with my opinion of April 8, 1932, it has been consistently held that under Chapter 15772, Acts of 1931, commonly called the Refunding Act of 1931, the approval of the State Board of Administration plays no part in the refunding operations.

September 26, 1934.

ROADS—SURPLUS FUNDS TO BE ADMITTED TO HENDRY COUNTY
FOR SALE, USE OF COUNTY ROAD FUND*Dear Sir:*

This is in response to your inquiry concerning the remittance of surplus funds in the hands of the Board of Administration to the account of Hendry County. You have handed me a certain resolution of the Board of County Commissioners under date of September 22, 1934, wherein the Board rescinded its prior resolution under date of August 16, 1934, concerning this matter. Also you have handed me resolution adopted on September 22nd, requesting the State Board of Administration to forward to Hendry County the sum of \$7,000.00, the said resolution reciting that there will be a surplus over and above the amount needed for current bond obligations, and that it is deemed expedient

MISCELLANEOUS

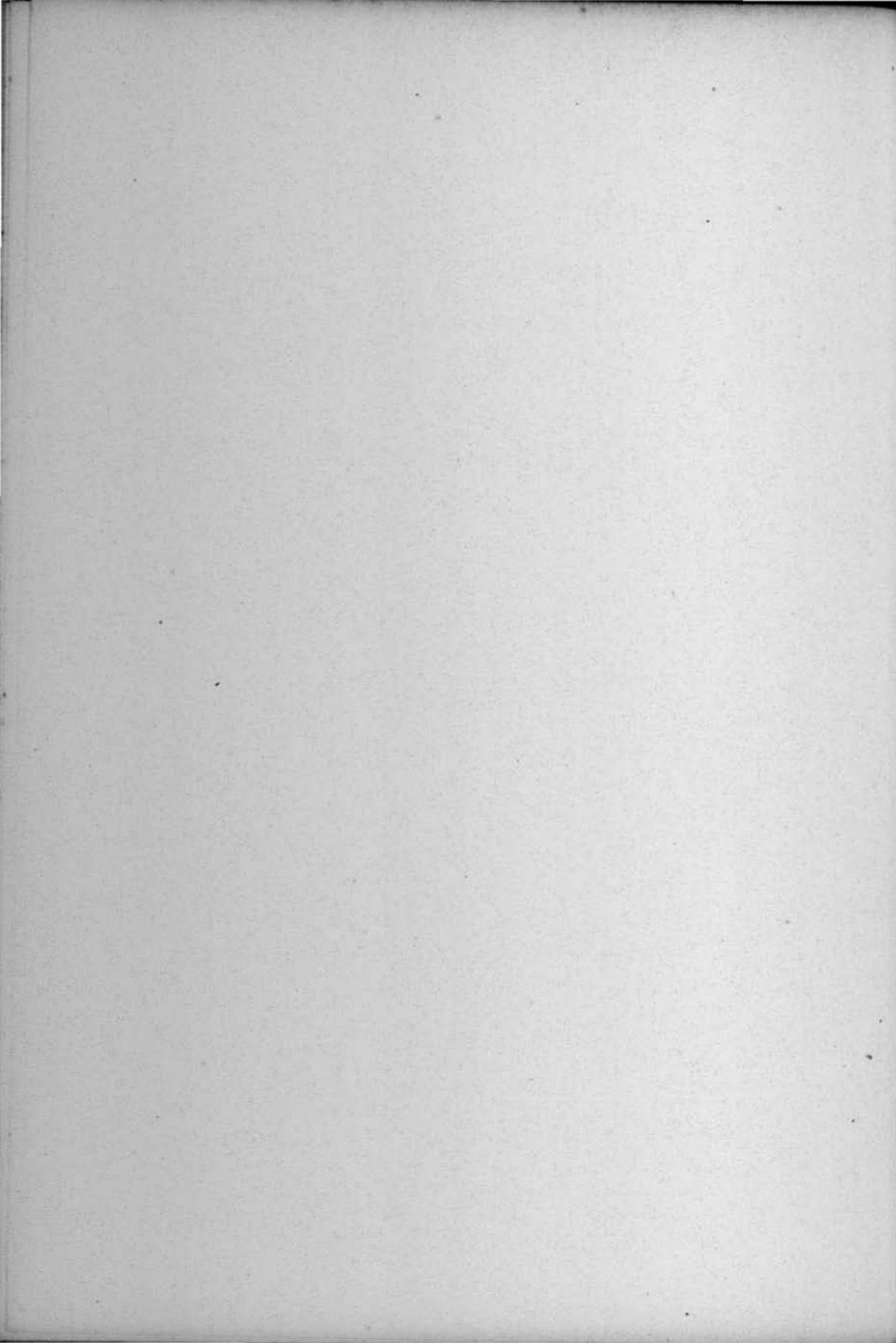
and to the best interests of the county that the roads be maintained and kept in a passable condition.

It is my opinion that under Section 14 of Chapter 14486, Acts of 1929, if there is such \$7,000.00 surplus to the credit of Hendry County, the same may be remitted to the county to be used by such county only in the construction and/or maintenance of roads therein; and that you are, at the request of the board of county commissioners by such resolution, authorized to make such remittance.

CHAPTER III

COUNTY OFFICERS

	Page
Section 1. In General	193
Section 2. Budget Commissions	201
Section 3. County Commissioners	207
Section 4. Tax Assessors	221
Section 5. Tax Collectors	233
Section 6. Clerks of Circuit Court	242
Section 7. County Judges	254
Section 8. Sheriffs	259
Section 9. Justices of the Peace	268
Section 10. Constables	272



COUNTY OFFICERS

SECTION 1

IN GENERAL

August 9, 1934.

MAY HOLD POSITION IN C. C. C. CAMP

Dear Sir:

I have your letter of the 7th instant, making inquiry if one can hold an elective office such as County Commissioner and, at the same time, hold a position with the United States Forest Service as foreman in a C. C. C. Camp.

In reply I beg to say that assuming that the position of foreman in a C. C. C. Camp is an employment and not an office, I know of no legal reason why one holding such a position could not, at the same time, hold an elective office such as County Commissioner.

April 24, 1934.

FIVE DOLLAR FEE ALLOWED AS CUSTODIAN OF REGISTRATION BOOKS

Dear Sir:

I am in receipt of your letter of the 20th inst., making inquiry if under the provisions of Chapter 15,629 of 1931, relating to certain Counties, district registration officers are entitled under Section 5 of said Act to receive \$5.00 in addition to 15 cents for each registration.

You will note that the compensation of \$5.00 is for the specific service of "being custodian of the registration books," and the statute provides a separate fee for each registration.

In my opinion the district registration officer under the provisions of said section is entitled to the fee of \$5.00 as custodian of the registration books in addition to the prescribed fee for each registration.

September 21, 1934.

SUPERVISOR OF REGISTRATION SHOULD HAVE PRIVATE OFFICE

Dear Sir:

I am in receipt of your letter of the 18th instant, advising that due to lack of room in your Court House in Dade City it has been a custom to use the room occupied by the Supervisor of Registration as a witness room during sessions of Court, which necessitates persons other than the Supervisor of Registration to have a key and access to this room. In reply I beg to say that I agree with you that as Supervisor of Registration you should have a private office to which others should not have access, except when you are present.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

I refer you to Section 2276 (19), Compiled General Laws of Florida, 1934 Supplement, being Chapter 14,492 of 1929, which is an Act authorizing the Board of County Commissioners to lease additional buildings or space therein for Court House purposes where the Court House does not have adequate space for the accommodation of the offices of the County Officers.

January 25, 1933.

ASSIGNMENT OF JUDGMENTS AND TAX ANTICIPATION NOTES
NOT APPROVED SECURITY

Dear Sir:

Replying to your request of the 25th instant for an opinion as to whether tax anticipation notes and assignment of judgments come within the law regulating the kind of securities required of banks in qualifying as county and school depositories under Section 2405 of the Compiled General Laws of Florida 1927, I beg to advise that in my opinion such instruments are not included within the purview of said statute.

Banks to qualify as county depositories are required to execute and deliver a surety bond, issued by some company duly authorized to do business in this State or make satisfactory deposit to the credit of the county of federal, state, county or municipal bonds in an amount to be determined by the board and approved both as to amount and validity by the Comptroller.

I do not think that tax anticipation notes or assignment of judgments was intended by the Legislature to be included within the term "bonds" as used in said Act.

February 6, 1933.

APPOINTMENT—SUBJECT TO SUSPENSION BY GOVERNOR ONLY
FOR CAUSES AS PROVIDED BY CONSTITUTION AND STATUTE

Dear Sir:

Replying to your favor of February 2nd, permit me to say Section 3690, Compiled General Laws, provides that the Governor may, upon request and recommendation of the Board of County Commissioners, appoint an officer in each county who shall be known as the probation officer of the county for which appointed. The statute further provides that the term of the probation officer shall be four years, and in counties of more than 50,000 population the salary shall be \$1500 per annum, and shall be payable monthly by the county commissioners out of the fine and forfeiture fund.

You ask to be advised whether or not in my opinion the board of county commissioners or the Governor have any right to suspend the probation officer without first filing charges of some kind. Also,

IN GENERAL

whether or not the office under the law can be abolished without an act of the Legislature.

Replying to your question, permit me to say in view of the provisions of the statute quoted, it is my opinion that when the county commissioners have requested the Governor to appoint a probation officer, and have recommended a person for appointment, which person has been appointed by the Governor for a term of four years, such appointee is entitled to the office for the term for which appointed. I do not think the board of county commissioners could abolish the office or legally refuse to pay the probation officer, unless such officer had been suspended from office by the Governor.

The Constitution and laws of Florida expressly designate the causes for which the Governor may suspend a State or county officer.

For further information upon this question, permit me to suggest that you take the matter up with the County Attorney of Polk County, or with your own legal adviser.

April 14, 1934.

APPOINTMENT; MUST BE DULY COMMISSIONED; TWO YEAR
TERM; POWERS AND DUTIES

Dear Sir:

You have referred to this office for its opinion, letter under date of April 5, 1934, from the Honorable ———, Judge of the Juvenile Court of Orange County.

In response thereto, I beg to advise as follows:

1. Section 3693, Compiled General Laws of 1927, provides as follows:

"The Governor may appoint in each county associate probation officers of either sex. Such associate probation officers shall serve without compensation. The term of office for an associate probation officer shall be two years from the date of appointment. Associate probation officers shall have the same duties and authority as those given to probation officers."

It is my opinion that, when appointed, such associate probation officers should be duly commissioned and will be required to pay a fee of ten dollars, as fixed by Chapter 14669, Acts of 1933. (See Constitution, Article VIII, Section 7; Dade County vs. State, 116 So. 72; 46 C. J. 254.)

2. It is not necessary for proposed appointees for such office to be approved by any local person or group.

March 14, 1933.

ALLOCATION OF MONEY COLLECTED ON DEFAULTING OFFICERS
BONDS

Dear Sir:

Replying to your letter of the 9th instant, relative to your duty in reporting collections made on the bond of former clerk of the circuit

BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

court of Brevard County, it seems to me that these funds should be reported and turned over to the Comptroller for distribution in the absence of an order of the court making such distribution.

I think, however, that the court in the action on the bond in its judgment might order the allocation and distribution of the funds collected where the action is jointly brought for both the State and county.

As to the question of the rights of tax certificate holders to participate in this fund, it seems to me that they are entitled to their proportionate part of the funds collected, but I do not see the necessity for making them parties to the suit.

I do not think that any part of the funds collected on the bond can lawfully be used to refund money deposited with the former clerk as advance court cost in civil cases. There is no law requiring advance deposit of costs.

Hence, when deposits are made to cover future costs in civil cases, it becomes a matter between the litigant and the clerk.

March 15, 1933

CLERKS OF CRIMINAL COURT AND COUNTY COURT NOT AUTHOR-
IZED TO CHARGE COUNTY FOR AUDIT OF BOOKS NOR
COST FOR DISMISSING CIVIL CASES

Dear Sir:

I acknowledge receipt of your letter of the 11th instant with enclosures attached with reference to the disallowance by the Board of County Commissioners of Orange County of certain items in the reports of the *former Clerk of the County Court and Criminal Court of Record of Orange County*.

The resolution of the board of county commissioners recites the disallowance of an item of expense designated "for auditing" in the sum of \$200, and another item for "docketing, searching, and dismissing 638 cases at \$.95" in the amount of \$606.10 paid to him by the county. It is further recited in said resolution that this last item represents costs paid to the former Clerk for dismissing civil cases in the County Court.

If the recitals in the resolution of the board of county commissioners are true, then they are correct in refusing to allow these credits. There is no authority in law for an officer to audit his own books or accounts and charge the same as an item of expense against his office. Neither is there any liability against the county for the payment of costs in civil cases to which the county is not a party, nor authority for paying the same out of county funds.

If these items have been charged by the former Clerk as expenses of his office, then he is due a refund to the county, as stated in said resolution, and it is immaterial who makes the demand for the refund.

IN GENERAL

The bond in the case runs to the Governor for the use and benefit of the county, but the obligation is to the county. If it becomes necessary to file suit on the bond, the suit would be brought in the name of the Governor of the State for the use and benefit of the county. However, the bonding company would probably make settlement without the necessity for suit.

August 6, 1934

PERSON ELECTED TO OFFICE HELD BY ONE, WHO WAS APPOINTED
TO HOLD SAME UNTIL THE QUALIFICATION OF HIS
SUCCESSOR MAY PROCEED TO QUALIFY
UPON RECEIPT OF HIS COMMISSION

Dear Sir:

I am in receipt of your letter of the 6th instant, advising that in the recent Primary in LaFayette County you defeated Mr. ———, who was appointed in 1933 to hold office until the qualification of his successor who may be chosen at the ensuing General Election. You make inquiry if, in the event of your election in the General Election to be held in November, you may qualify and take office immediately or will have to wait until the first Tuesday in January 1935 to take office as Tax Collector.

In reply I beg to say that in the event of your election at the General Election in November it will not be necessary for you to wait until the first Tuesday in January 1935 to qualify and take office, but you may proceed with your qualification and upon receipt of your commission, after due qualification, you may take office at once.

June 7, 1934

REPORTS SHOULD BE MADE IN ACCORDANCE WITH EXISTING
LAW UNTIL SAME IS JUDICIALLY DECLARED
UNCONSTITUTIONAL

Dear Sir:

I am in receipt of your letter of the 2nd instant, enclosing communication from * * * with reference to reports of County Officers of Palm Beach County.

Mr. ——— encloses with his letter copy of a resolution by the County Commissioners of Palm Beach County in which it appears that the report of the several officers are not all on the same basis. Mr. ——— states that the Board of County Commissioners had voted to bring mandamus proceedings to force the County Officials to comply with the law in the making of their reports. He also states that the fee of officials of Palm Beach County take the position that Chapter 15979, Acts of 1933, is not a valid law and that they should not be compelled to com-

BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

ply with the same. Mr. ——— suggests that you demand proper report from the County Officials and suggests that Palm Beach County should not be compelled to stand the expense of a mandamus suit.

Chapter 11954 of 1927 is an Act providing for reports of County Officials and fixing their salaries and is of general application throughout the State. Chapter 15979, Acts of 1933, is an Act fixing the salary of County Officials at lower figures than the above mentioned Act, and being based on population applies specifically to Palm Beach County.

In the case of State vs. State Board of Equalization, 84 Fla. 592, 94 So. 681, the second headnote of said decision reads as follows:

"Officers must obey a law found on the statute books until in a proper proceeding its constitutionality is judicially passed upon."

One way, however, for bringing the matter to the attention of the Court is for an officer to refuse to report under the provisions of the 1933 Act, which refusal would be a basis for proceedings, and since the validity of the 1933 Act is brought in question and can only be judicially determined by the Courts, I think it would be well for the question to be brought to the Courts for determination.

April 27, 1934.

AUTHORITY OF COMPTROLLER TO CERTIFY TO AND REQUIRE
COLLECTION BY STATE ATTORNEY OF AMOUNTS
DUE ON DEFAULTING OFFICIAL'S BOND

Dear Sir:

This is in response to your request of April 25, 1934, for my opinion as to whether or not you have authority, following a report by the State Auditor showing a shortage on the part of county officials, to certify to the State Attorney the amount so found due, and require collection thereof by such State Attorney.

As I understand your communication, it concerns only the matter of your authority in connection with sums due from the surety or sureties on the bond of a county official, which bond runs to the Governor of the State.

It is my opinion that under the provisions of Sections 1345, 1346 and 1347, Compiled General Laws of 1927, taken in connection with Section 4748, 4749, 4750, 4752, and 4753, you do have authority to certify to the State Attorney the amount due from the surety or sureties on such bond, and that it then becomes the duty of the State Attorney to institute suit, if necessary, in the name of the obligee named in such bond to effect collection.

This opinion is based upon the theory that the intention of the Legislature as evidenced by the statutes having to do with the bond and the handling of claims arising thereon was to make such a claim a demand

IN GENERAL

in favor of the State, to be handled by the State Attorney, and requiring the State Attorney to institute proceedings thereon, should the same become necessary. The claim is none the less a claim or demand in favor of the State, merely because upon such claim or demand being realized, the State holds the proceeds thereof in trust for some of its subdivisions or governmental agencies.

This is in line with my opinion of February 28, 1934, and insofar as it may be inconsistent with opinion under date of October 20, 1933, the latter is superseded or modified.

December 19, 1933.

FEES EARNED MAY BE REPORTED WHETHER COLLECTED OR NOT

Dear Sir:

In your letter of December 18th, after stating the requirements of Sections 472 and 2827 of the Compiled General Laws of Florida, 1927, you request my opinion as to whether items earned as fees by county officers for any given year but not collected because of the inability of the State and/or county to pay the same, could be reported by such county officers as fees and commissions earned but not collected.

The law requires of county officers to report semi-annually all fees collected. There is no requirement in law for reporting fees earned but not collected, but I see no objection to the semi-annual report of such officers showing the amount of fees earned but not collected because of the inability of the State and/or county to pay the same. It is my opinion, however, that fees earned but not collected for any given year, but collected later, should be considered and treated as collected as and for the year in which they were earned. I think this position is sustained by the holding of the Supreme Court in the case of Lee vs. Smith, et al., 111 Fla. 91, 149 So. 67.

May 31, 1933.

EXCESS FEES MAY BE RECOVERED

Dear Sir:

Replying to yours of May 27, permit me to say in the case of Orange County versus Robinson, the Supreme Court filed an opinion on May 26, 1933, copy of which I am enclosing herewith.

You will observe that the Supreme Court held that the county officers are liable for excess fees; that is to say, for amounts in excess of the maximum compensation of Chapter 9270, Acts of 1923, and also for amounts in excess of the maximum allowed by Chapter 11954, Acts of 1927, on collections since the 1927 act became effective.

You will also observe that the Court held that amount due from and unpaid by county officers cannot be recovered by a bill in equity, as

200 BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

there appears to be a clear, adequate and complete remedy at law. The Court cites *Bellamy versus Hawkins*, 16 Florida 735, and *State, ex rel, Duval County versus Brown*, 100 Florida 409, 129 So. 172.

February 1, 1933.

ALLOCATION OF MONEY COLLECTED ON BOND

Dear Sir:

I am in receipt of your letter of January 23, making inquiry as to the allocation of bond money to be collected on the bond of N. T. Froscher, Clerk of the Circuit Court.

You state that the audit shows a shortage of about \$24,000.00 made up of approximately \$17,000.00 tax sale redemption, \$5,800.00 excess fees not paid to County Commissioners, and \$1100.00 unearned Court costs. You ask if the whole amount collected may be applied on the \$5800.00 excess fees.

From your statement that one of the items owed is for tax sale certificates, it would appear that the State as well as the County is due certain funds. In such case the amount should be distributed between the State and County in proportion to their interests. Then the County's part should be distributed to the several county funds in the proportion that each bears to the whole amount for the county.

January 6, 1933.

COUNTY AGRICULTURAL AGENT—BOARD COUNTY COMMISSIONERS NOT AUTHORIZED TO PAY WHEN NOT PROVIDED FOR IN THE BUDGET

Dear Sir:

Replying to your letter of January 6th, in which you state that the present budget required by Section 2306, Compiled General Laws, under which your board of county commissioners is operating, does not show an item for the salary of the county agricultural agent, that there was no levy for an agricultural fund, and you wish to be advised whether or not under the circumstances the board can legally employ and pay such county agent, permit me to say:

Section 2306 expressly provides that the adoption of the estimates in the budget of the board of county commissioners gives said estimates the force and effect of fixed appropriations, and further provides that the same shall not be altered or amended or exceeded, nor shall the expenses estimated under one head be paid out of the estimate for any other expense.

In view of the provisions of said Section, it is my opinion that there is no fund from which your board may at this time legally pay the county agricultural agent.

I am herewith returning your enclosure.

SECTION 2

BUDGET COMMISSION

July 17, 1933.

COUNTY BUDGET—ITEMS OF EXPENDITURE TRANSFERRED UPON
RESOLUTION OF THE BOARD AND APPROVAL OF COMPTROLLER*Dear Sir:*

Replying to yours of July 15th, permit me to say it is my opinion, under the provisions of House Bill No. 424, Chapter 16286, Acts of 1933, when a Board of County Commissioners has set up a budget under the provisions of said Act that each item has the force and effect of fixed appropriations and that the same can not be legally altered, amended or exceeded, nor can the expenses estimated under one head be paid out of the estimate for any other expense. However, the Act contains a proviso which reads as follows:

"That any item of expenditure set forth in an estimate of expenditures may be transferred to another item of expenditures upon resolution duly adopted by the Board of County Commissioners when approved by the Comptroller of the State of Florida, except items of expenditure for debt services."

I construe the proviso, quoted above, to mean that if after the Board has adopted its budget items the members thereof become convinced that they failed to appropriate a sufficient amount to a particular item, and that more than enough was appropriated to some other item, they may, by resolution, set up such facts and submit the same to the State Comptroller with the request that a transfer be allowed, and upon approval by the Comptroller the transfer may legally be made.

July 26, 1933.

COUNTY BUDGET—ITEMS OF EXPENDITURES TRANSFERRED
MUST NOT EXCEED TOTAL AMOUNT OF BUDGET*Dear Sir:*

This refers to your favor of July 13, pertaining to House Bill No. 424, Chapter 16286, Laws of 1933, which provides for the making of the county budget by the Board of County Commissioners of the several counties of the State. The paragraph in question is as follows:

"The adoption of said estimates by the said board shall give said estimates the force and effect of fixed appropriations, and the same shall not be altered or amended or exceeded, nor shall the expenses estimated under one head be paid out of the estimate for any other expense; providing, however, that any item of expenditure set forth in an estimate of expenditures may be transferred to another item of expenditure upon resolution duly adopted by the Board of County Commissioners when approved by the Comptroller of the State of Florida, except items

BUDGET COMMISSION

of expenditure for debt service, and provided further, that in counties where there exists a budget commission, the approval of such budget commission shall first be obtained before the Comptroller is authorized to approve such transfer."

It is my opinion that the above section as amended gives the Board of County Commissioners, with the approval of the Comptroller, the authority to transfer an item of expenditure from one estimate of the expenditures to another item of expenditure, but in my opinion it does not permit the exceeding the amount of any estimate of expenditure. In other words, if the budget has set, for example, one thousand dollars for one expenditure and one thousand dollars for another expenditure and the first thousand dollars has been exhausted, it is my opinion that by resolution of the Board of County Commissioners, approved by the Comptroller, an item that should have been paid out of the first thousand dollars may be transferred as an item of expenditure to the second budgeted one thousand dollars.

It is my opinion that the amendment does not authorize the exceeding of the different budgeted items, but that any particular item of expenditure may be transferred so long as the authorized total budgeted items are not exceeded.

May 24, 1934.

POWER TO MAKE SUPPLEMENTAL BUDGET

Dear Sir:

This refers to your request for my view with reference to a question which has arisen pertaining to the annual county budget made by the budget commission of *Orange County*, Florida, for the present fiscal year. I gather from your request that, because of some requirements of service in connection with the administration of what is known as the Futch Tax Law, the Tax Collector of Orange County finds that he is unable to render to the public the service required and stay within the budget allowance made to him.

That, further, because of the handling of the automobile tags and the required amount of public work connected therewith, he finds himself unable to render this service within the budgeted allowance. That these two situations or demands of public service by the tax collector are such that unless some additional amount can be allowed to the tax collector, the actual required necessary service to be rendered by the tax collector can not be given to the public; and, to a certain extent at least, the public service of this office will break down.

That the question then arises whether or not, under the budget law controlling Orange County, to-wit, Chapter 15938, Acts of 1933, the Orange County Budget Commission may make and file a supplemental budget allowance to provide the necessary funds to the Tax Collector, with

BUDGET COMMISSION

a view that the actual required public service may be carried on in a proper manner by this officer.

It seems to me that Section 9 of Chapter 15938 is the controlling provision, and I find nothing in the said Section 9 which prohibits the filing of a supplemental budget at any time, when necessity may demand. The County Budget Commission, under Section 9, is given full power to change, alter, amend, increase or decrease any item, and the total amount or amounts of any estimates of expenditures, receipts, etc. It also provides that the Budget Commission may fix and determine the amounts to be paid or allowed by the County during the ensuing fiscal year by each and every county officer, for salaries of employees, deputies, supplies, etc. Then the Act proceeds to make such budget a final and fixed appropriation; however, upon a careful reading of the Act, it will be seen that the budget when filed shall be a final and fixed appropriation, and that the same shall not be altered, amended or exceeded in whole or in part "*by any such Board or Officer or member thereof.*" It, therefore, appears to me that the making of the budget a final and fixed appropriation is only final and fixed *as against the officer or board or member who expends the money.* The Act does not say that it shall be a final and fixed appropriation in the manner and sense that the County Budget Commission itself may not alter, amend or change the budget. The very fact that the Act makes it a final and fixed appropriation as against the officers who expend the money and says nothing about it being a final and fixed appropriation as to the County Budget Commission, leads me to believe that the County Budget Commission may, from time to time, file a supplemental budget, if and when matters and things occur, that were not foreseen at the time of the making of the original budget, else the administration of governmental functions to that extent will fail.

In the case of Whitney, et al, v. City of New Haven, reported in Atlantic Reporter, Volume 20, text page 668, where there was under discussion the question of appropriations for purposes unforeseen at the time they were made, and as to the effect of appropriations made, the Court used this language:

"This prohibition is plainly for the protection of the city against its officers and agents. Its purpose was not to debar the city itself from action upon *subjects not foreseen when the annual appropriations are made*, and from expenditures which may be involved in such action."

Thus, I have reached the conclusion, and it is my view, that the Orange County Budget Commission, under the law heretofore referred to, has the authority to file a supplemental budget making such allowances as the Budget Commission finds necessary, in order to compensate the Tax Collector in such an amount as that he may in a reasonable and proper manner take care of the unexpected and unforeseen work which has developed and which was not in the mind of the Budget Commission at the time the original budget was made.

204 BIENNIAL REPORT OF THE ATTORNEY GENERAL
BUDGET COMMISSION

Proper government service to the public must not break down, and it is my view that keeping this principle in mind the budget law authorizes the County Budget Commission to take care of this unforeseen situation, and, thus, to continue a proper service by the Tax Collector to the people, who have a right to expect such service from that officer.

June 7, 1934.

PROPOSED CHANGES IN BUDGET RELATIVE TO SALARIES

Dear Sir:

This is in response to your communication of May 31, 1934, wherein you enclose copy of proposed budget items involving the budgeting of salaries of employees or assistants to the Clerk of the Circuit Court for services in connection with his duties as Clerk and Auditor for the Board of County Commissioners.

The Budget Commission is undertaking to change the method of handling this matter by budgeting the item of such clerical assistants so as to include it as part of the gross sum determined and fixed for salaries of employees and deputies in the Clerk's office, rather than as a separate item for the salaries of accountants, bookkeepers, etc., under the Board of County Commissioners Department.

You ask for my opinion as to whether or not the proposed method is proper, and I beg to advise that in my opinion such method is proper.

However, I call your attention to page 3 inclosed in your communication showing this item under the Circuit Court Department, whereas in my opinion it should be under the Board of County Commissioners Department as an expenditure in the nature of compensation to the Clerk of the Circuit Court for services rendered as Clerk and Auditor for the Board of County Commissioners. This will then show, as it does on page 4, as part of the gross amount fixed for the Clerk of the Circuit Court and as ex officio Clerk and Auditor of the Board of County Commissioners.

I also discussed this matter with the State Auditing Department, and this proposed method meets with their approval subject to the change above noted.

July 13, 1934.

CONSTRUCTION OF—CHAPTER 15938, ACTS 1933

Dear Sir:

This is in response to your request of even date for my opinion concerning the Budget Commission Act, you having handed me a letter addressed to you under date of July 10, 1934, by the Secretary ex officio, Palm Beach County Budget Commission. Five questions are asked, which I repeat and answer as follows:

1. In what way, after the final certification of the budget, are funds to be appropriated to meet unexpected needs and emergencies?

BUDGET COMMISSION

2. After final certification of the budget, and before tax levy is made, may revisions be made in the budget of any Board, by the transfer or increase of items, which in effect would increase the total annual expenditures allocated to that Board?

5. Where, through tax collections or otherwise, unanticipated surpluses are received by any Board, may such surplus funds be transferred to unanticipated items, or to items in which an unexpected deficit has accrued, or where unexpected emergencies have arisen?

In answer to the above three questions, I herewith enclose copy of my opinion addressed to you under date of May 24, 1934, and advise that it is my opinion that the proper procedure in the above three instances is to make up a supplemental budget, which may be done by the Budget Commission at any time.

3. After final certification, but before tax levy is made, may revisions be made in the budget of any Board by way of the transfer of the budgeted items from one item to another, which transfers would not increase the total expenditures allocated to that Board?

4. After final certification of the budget, and after tax levy has been made by the County Commissioners, may revisions be made in the budget of any Board by way of the transfer of budgeted items from one item to another, which transfers would not increase the total expenditures allocated to that Board?

In answer to the last two questions, it is my opinion that under Section 16 of said act such revision, as mentioned in said questions, may be made at any time by the following of the procedure of said Section 16.

The theory of this opinion is that when changes are found necessary which increase the total expenditures as allocated, a supplemental budget is necessary, and, in accordance with my opinion of May 24, 1934, such supplemental budget may be made at any time; but that, if the revision constitutes merely a transfer of already budgeted funds from one fund to another without increasing the annual expenditures as allocated, Sections 16 of the said act sets forth the procedure to be followed.

I suggest that to obviate question, that in cases where a supplemental budget is necessary that the procedure set forth in Section 9 regarding publication of proposed budgets, together with opportunity of objection, be complied with. This is merely a suggestion, and I am expressing no formal opinion thereon.

When the procedure is that outlined in Section 16, nothing more need be done than to follow the requirements set forth in the said Section, to-wit:

Resolution by the Board or officer requesting authority for the transfer, the same to be expressly concurred in by resolution of the budget commission, recorded in its minutes and approved by the State Comptroller in writing.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
BUDGET COMMISSION

September 13, 1934

COMPENSATION FOR OTHER SERVICES FROM COUNTY

Dear Sir:

Replying to your letter of September 11th, permit me to say unless there is some express provision in the law creating the Budget Commission for Palm Beach County which prohibits a member of said Commission receiving compensation from the County for services to the County, I can see no legal objection to giving a list of the qualified electors' names to a newspaper for publication where a member of the Budget Commission is the editor and publisher of said newspaper.

December 6, 1934

SUCCESSORS NOT BOUND BY PREVIOUS CONTRACT

Dear Sir:

Replying to your favor of December 4th., wherein you ask to be advised whether or not a Board of County Commissioners, a majority of whom will go out of office in January 1935, can enter into a valid contract for the employment of persons for the ensuing year, permit me to say a County Board cannot bind their successors in office in such matters, unless the law expressly authorizes them to do so.

Where persons are employed and hold their positions at the pleasure of the Board, the employment can be terminated at any time.

SECTION 3

COUNTY COMMISSIONERS

October 23, 1934

COUNTY COMMISSIONERS HAVE AUTHORITY UNDER THE LAW
TO BUY, EQUIP AND OPERATE PHOTOSTAT MACHINES*Dear Sir:*

I am in receipt of your letter of the 18th instant, enclosing correspondence between yourself and the State Auditor. I note in your letter to the State Auditor, under date of October 18, 1934, you make the following inquiry:

"Can a Board of County Commissioners, where photostat machines are now or may henceforth be used, prescribe a rental for such machine, or how supplies entering into the operation of the machine, other than records of a permanent character, shall be paid?"

I note in copy of your letter under date of August 11th to the State Auditor you state that you find a considerable portion of the cost of supplies for a photostat machine is for chemicals. I gather from said letter that it is your idea that the county should pay only for permanent records but should not pay for other supplies for operating such machine, such as chemicals for same.

In reply I beg to refer you to Chapter 13590, Laws of Florida, Acts of 1929. The title of said Act contains the following language:

"An Act to provide for the Purchase, Installation and Operation of Equipment for Recording in the Public Records by Photographic Process * * ."

Section 1 of said Act contains the following language:

"The Board of County Commissioners shall have the exclusive right to select the machinery and *equipment and supplies* to be used in making public records by such photographic process and the Board of County Commissioners shall pay for the purchase and installation of the same * * ."

In view of the above language, it is my opinion that both the title and the body of said Act contemplates that the County Commissioners shall furnish all supplies necessary for the operation of such machines, including chemicals.

With reference to the County renting such machines or using the same for purposes other than making public records, such as doing photographic work for the public generally and making charges and receiving pay for same, I beg to say I find no authority for photostat machines owned by the County to be used for such purposes.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

February 13, 1933.

PAYMENT OF OFFICE EXPENSE BY COUNTY COMMISSIONERS AND
FURNISHING SUPPLIES

Dear Sir:

Replying to your letter of February 9th, in which you ask several questions concerning bills for certain items required by the several county officers of your county, and whether such bills should be paid by the county commissioners, permit me to say:

Sections 475, 476 and 1990, Compiled General Laws, appear to require the county commissioners to furnish the several county officers with books, forms and stationery.

Section 951 requires the county commissioners to pay for the printing of notices under said Section, and for the postage required for mailing out the same.

Section 921 requires the county commissioners to furnish and pay for maps used by the tax assessor.

With reference to furnishing postage for the clerk of the court, I think the county commissioners should furnish postage for all correspondence pertaining to the business of the county commissioners, which the clerk may be required to send out as clerk of the board of county commissioners. Also, the county commissioners should provide postage for mailing out county warrants.

As for the tax collector, I do not think that the county commissioners should provide postage stamps for mailing out tax statements replying to inquiries pertaining to taxes, or for mailing out tax receipts. Nor do I think the county commissioners should be required to pay for rubber stamps which may be ordered by a county officer.

Relative to the tax assessor, I do not think the county commissioners are required to furnish him with postage stamps. They should furnish stationery and tax return blanks, which tax return blanks can properly be designated as stationery.

The county commissioners may properly provide the county offices with necessary furniture, typewriters, and adding machines, and whatever other stationery may be required including scratch pads. I do not think the county commissioners are required to pay for typewriter ribbons, or to furnish the clerk of the court with blank deeds, mortgages, chattel mortgages, leases, et cetera.

I think forms for summons, defaults, and such forms as the clerk is required to send out as a part of his official duties, may properly be furnished under the head of stationery. This is likewise applicable to the county judge and the sheriff.

As you know, the statutes do not enumerate each item used in the several offices of the county, which may be paid for by the county commissioners. However, I think that all necessary stationery, blanks, and forms which the law requires a county officer to use in his official

COUNTY COMMISSIONERS

duties, may be furnished and paid for by the county commissioners under the statute authorizing them to furnish and pay for stationery.

The furniture in the several offices, including typewriters and adding machines, are presumed to be permanent fixtures, to remain in the county offices regardless of changes in personnel. The clerk of the court should have an inventory in his office files of all such property.

The questions you have presented, like many other questions with which you will be confronted as attorney to the board, are questions which are not definitely settled by law, and are of such nature that they must be determined by reason and discretion on the part of the board of county commissioners and the several county officers, upon the advice of the county attorney.

Under the provisions of the 1927 Act, in counties where the fees of county officers amount to more than the compensation allowed them by law, the county commissioners are required to create a county officers' surplus fee fund, from which the expense of stationery, furniture, and fixtures, etc. for the county officers, is required to be paid. However, in your county you state that there would be no excess fees. Therefore, no such fund can be created. However, at any time that an excess fee fund may be created, the expense of supplying the offices should be paid from such fund.

As you know, it is a well settled principle of law that a board of county commissioners is not authorized to disburse county funds for any purpose, except as expressly stated by law.

January 16, 1933.

REMOVAL FOR FAILURE TO RESIDE IN DISTRICT

Dear Sir:

This refers to your favor of the 13th. instant, relative to communication from Senator ———, together with series of affidavits with relation thereto. You request that I advise you as to the power of the Governor in this connection.

I beg to advise that Chapter 14681, Laws of Florida, Acts of 1931, applies to all counties having a population of not less than 10,000 and not more than 11,000, according to the 1930 United States Census, and provides that any County Commissioner

"shall actually reside, live and be a permanent resident with his place of abode"

in the District of the county for which he was elected as such County Commissioner.

The Act also provides that for the violation of this provision and for the failure of any County Commissioner

"to actually reside, live and have his place of abode in the County Commissioner's district from which he was elected"

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

shall be, upon showing to the Governor of the State of Florida immediately removed from office, and that this duty of the Governor shall be mandatory when it is shown to the Governor that such member of the Board of County Commissioners has violated this Act.

There may be some question as to the constitutionality of this Act, inasmuch as it applies to only four of the counties of the State and, further, is limited to one particular Census, to-wit: the United States Census of 1930, but as an administrative officer, it is my duty to consider the law valid and constitutional unless and until a Court of competent jurisdiction has held to the contrary. Thus, it is that it is my opinion that under this law it is your duty to remove this County Commissioner if and when it is shown to you to your satisfaction that he does not actually reside, live and have his place of abode in the District for which he was elected. Whether or not this question of fact of actual residence is disputed by the County Commissioner, I do not know. There are a number of affidavits to the effect that he does not actually live and have his place of abode in the District for which he was elected. There is one affidavit, to-wit: the affidavit of T. M. Edenfield, which makes an additional charge, that is, Commissioner "by his acts is dissipating the funds of said county." This, of course, if substantiated would, in my opinion, be a further ground of removal.

January 31, 1933.

AUTHORIZED TO EMPLOY AN ATTORNEY FOR COUNTY JUDGE'S
COURT

Dear Sir:

Replying to your favor of January 28, permit me to say Section 2155, Compiled General Laws, reads as follows:

"The Board of County Commissioners of the several and respective counties of the State of Florida, wherein there shall be no county Court or Criminal Court of Record or Court of Record for the trial of criminal causes, are hereby empowered and required to employ an attorney at law to prosecute all persons, firms and corporations, charged with the commission of any kind of offense against the laws of the State, in or before the County Judge's Court."

It does not appear that the Supreme Court has ever passed upon the question of whether or not the Section quoted above is a mandatory requirement upon the county commissioners. The language of the Statute appears to be mandatory in part. You will note that the Statute empowers the County Commissioners to employ an attorney, and the word "empower" is followed by the requirement to employ an attorney at law. It may be that a Court of Competent jurisdiction would construe the Statute to mean that the county commissioners are empowered to employ a county prosecuting attorney under the terms of the

BIENNIAL REPORT OF THE ATTORNEY GENERAL 211
COUNTY COMMISSIONERS

Statute, and that if a prosecuting attorney is employed, that he must be an attorney at law.

February 13, 1933.

EXPENSES OF, IF PROVIDED IN BUDGET, MAY BE PAID TO MEETING OF STATE ASSOCIATION COUNTY COMMISSIONERS

Dear Sir:

This refers to your letter of February 9th, in which you state that the county commissioners of your county desire to attend the next meeting of the State Association of County Commissioners, and you wish to be advised if the county commissioners may lawfully pay the expenses incurred in attending such meeting from county funds, and if so, from what fund.

My predecessor in office, Honorable Fred H. Davis, now a member of the Supreme Court, rendered an opinion under date of April 12, 1930, in which he held that, if provision has been made in the budget for the payment of such expenses, the same may legally be paid, provided such expenses are kept within reasonable limitations.

Of course, if there is no provision in the budget under the general fund, there would not be any fund against which the expense could be charged. You understand that no money can be spent by a board of county commissioners or board of public instruction which is not properly provided for in a budget, as required by law.

January 16, 1933.

MAY EMPLOY AND DISCHARGE ASSISTANT AUDITOR

Dear Sir:

This refers to your favor of January 14, relative to Chapter 13225, Laws of Florida, Special Acts of 1927.

Assuming that this act is constitutional, and I as an administrative officer have to so consider it unless and until a court of competent jurisdiction rules otherwise, I would state that it is my opinion that the County Commissioners may select, employ and discharge anyone they may see fit as an assistant auditor. This seems to be the specific working of the Statute, and the assistant auditor seems to be by the act made an employee of the County Commissioners, for the act further provides that said assistant auditor shall perform such other services as the Board of County Commissioners of Palm Beach County may from time to time require.

212 BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

June 7, 1933

\$200.00 PER YEAR IS MAXIMUM AMOUNT PER DIEM COUNTY
COMMISSIONER MAY RECEIVE

Dear Sir:

It is my opinion that Section 2204, Compiled General Laws of 1927, means that \$200.00 is the total amount of per diem a county commissioner may have for his services per year in counties less than fifteen thousand population. By reading the entire Section of the Statute, it seems to me perfectly clear that the \$200.00 is the maximum amount of per diem allowed per year.

November 18, 1933

COUNTY COMMISSIONERS AUTHORIZED TO ACCEPT OFFER OF
COMPROMISE OF JUDGMENT ON ESTREATED BAIL BONDS

Dear Sir:

This acknowledges receipt of your letter of November 16th, in which you request my opinion as to the authority of a board of county commissioners to compromise certain judgments obtained on estreated bail bonds, such compromises to be effective with the surety thereon. Your communication also requests my opinion as to the function of this office in the premises.

From this letter I understand that it is definitely determined that the judgments are not collectible in full, due to the absence of assets upon which execution can be levied. The only possible asset is a piece of real estate against which there is a prior mortgage together with some \$19,000 in other judgments.

The general powers of a board of county commissioners include among others the power to make such orders concerning the care of and improvement of the corporate property of the county as may be deemed expedient, and also the power to represent the county in the prosecution and defense of all legal causes. (Compiled General Laws 1927, Section 2153.)

These judgments are entered in favor of the State of Florida for the use and benefit of the particular county (See Sections 2827 and 8356, Compiled General Laws 1927). The county is therefore the real party in interest, and the State is a mere nominal or formal party.

The law is well settled by a decided weight of authority that the county commissioners have the power to compromise or settle claims which the county may have prior to judgment thereon. As to the power of the board of county commissioners to compromise or settle for less than the full amount, judgments obtained by the county is a matter upon which there is a direct conflict of authority. This question has never been determined by our Supreme Court, but I am of the opinion that

COUNTY COMMISSIONERS

better reason supports the rule to the effect that such power exists, provided that the compromise is made in good faith and the judgment is not collectible in full, the usual ground of non-collectibility, of course, being insolvency. (Insolvency is used in the sense of inability to meet claims because of lack of sufficient assets out of which the same can be realized.)

In other words, I am of the opinion that the same rules of business conduct by which a prudent person is governed are applicable to a county in the management of its affairs under similar circumstances; that the power to compromise in a situation of this kind is derived from the express powers vested in the board, and that to deny the county any recovery because it cannot recover all would in many instances defeat the realization by the county of monies to which it is entitled.

I am not unmindful of the fact that such ruling may open the door to compromises or settlements that are not justified by the facts; but we must presume that county officials will discharge their duties in good faith for the best interest of the county involved. The vesting of any power carries with it the possibility of its abuse.

I am of the opinion, therefore, that a board of county commissioners in a proper case by proper resolution may accept an offer of compromise of a judgment, and direct the clerk of their board or the prosecuting attorney of the county appearing as counsel of record in the proceedings resulting in the judgment, to satisfy the same of record; and that such satisfaction will be legal and binding.

Inasmuch as the State is a mere formal and nominal party plaintiff, your office has no duty to perform in regard to authorizing or approving the compromise so made.

June 4, 1934.

AUTHORIZED TO BUY CLOTHING AND MEDICAL SUPPLIES FOR PRISONERS

Dear Sir:

I am in receipt of your letter of the 1st instant, advising that sometime last year several bills for shoes, clothing and medicine for prisoners held in jail under criminal charges were presented to the Board of County Commissioners for payment; that these items were purchased by the jailer for Palm Beach County and the bills okehed by him; that you as County Attorney have been unable to find any authority for the payment of these bills by the County and making inquiry if the Board of County Commissioners has authority to pay the same.

In reply I beg to call your attention to paragraph 4, Section 2153, Compiled General Laws of Florida, 1927, reading as follows:

"To have care and provide for the poor and indigent people of the County."

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

In my opinion said Section would be sufficient authority for the County Commissioners to pay for shoes, clothing and medicine for poor and indigent people imprisoned in the County Jail if such shoes, clothing and medicine were actually necessary for the health and comfort of such prisoners. I think, however, it is within the province of the County Commissioners to check up and determine the necessity for such expenditures.

October 2, 1934.

PROCEDURE WHEN RIGHT TO OFFICE FORFEITED

Dear Sir:

This is in reply to your favor of October first.

You say that a county commissioner has removed from his district and has lived out of his district for the past twelve months, and the question arises as to whether or not he has forfeited his right to be a county commissioner in your district.

I beg to state that if he has changed his domicile and has been domiciled out of his district for a given length of time, he does forfeit his office. In other words, if he moved or changed his domicile to another district, he no longer has a right to hold this office in this district. But, mere residence outside of his district, does not effect his domicile. In other words, a party who is county commissioner could move his effects and family out of his district temporarily for the purpose of being near his work or for any purpose, if he does not intend to change his home or domicile and if he intends to go back after the purpose for which he moved has been accomplished. Under such circumstance, he would not forfeit his office.

You ask what the procedure would be to remove such county commissioner. I beg to advise that a showing should be made to the Governor, and if it is properly shown that the party has moved his domicile, and if the Governor were to appoint another officer to the unexpired term of office, then, if the party you wish to seeek to remove, would refuse to surrender his office, the party appointed by the Governor would bring what we term Quo Warranto proceedings, and the Court would determine who was entitled to the office.

November 5, 1934.

METHOD OF CHANGING DISTRICTS

Dear Sir:

Replying to your letter of the 30th ultimo, with reference to the method of changing the County Commissioners' Districts, I respectfully call your attention to the provisions of Sections 2150 and 2151 of the Compiled General Laws of Florida, 1927, also to Article VIII, Section

COUNTY COMMISSIONERS

5 of the Florida Constitution. I see no reason why the Districts can not be changed by Special Act of the Legislature provided that each District in the County be made as nearly as possible equal in proportion to population as is required by Section 5 of Article VIII of the Constitution and provided further that there be five and only five of such Districts in the County as in said Section provided.

July 5, 1933.

SALARIES, MILEAGE

Replying to yours of June 26, permit me to say Chapter 15947, Acts of 1933, fixes the salaries of county commissioners of Volusia County at nine hundred dollars per annum, but makes no reference to mileage for the county commissioners. Under the general law the county commissioners are not entitled to mileage for inspecting roads.

Senate Bill No. 105, Chapter 15984, Acts of 1933, provides that bailiffs for all courts shall receive one dollar and twenty-five cents per day. This is also applicable to bailiffs' attendance upon the grand juries.

November 9, 1933.

ATTORNEY—COUNTY COMMISSIONERS NOT AUTHORIZED TO
EMPLOY FOR COLLECTION PERSONAL PROPERTY TAX—
REMEDY IN CASE OF DEFAULT

Dear Sir:

I have your letter of November 7th, referring to your letter of September 26th, with reference to employment of an attorney by the County Commissioners or by yourself for the collection of personal property taxes.

In reply I beg to say I do not know of any authority for the County Commissioners to employ an attorney for such purposes. Section 2866, Compiled General Laws of Florida, 1927, defines the term "net income" of a County official as meaning the residue of income from such office after deducting all reasonable expenditure for salaries of Clerks and assistants and the necessary expenditures for the proper operation of said office. *In my opinion the words "necessary expenditures" in said statute may properly be construed to authorize the employment by you of an attorney to resist injunction proceedings brought against you seeking to restrain the collection of taxes on personal property.*

The blank form to be handed the Sheriff or Deputy Tax Collector, accompanying your letter, appears to be in good form. Section 955, Compiled General Laws of Florida, 1927, provides for the appointment of Deputy Tax Collectors to levy upon and seize personal property for unpaid taxes. Section 956 provides for sale of such property. Section 958 provides for Tax Collector by his warrant to authorize the Sheriff in case of removal of property from County to proceed against the same.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

February 25, 1933.

AUTHORIZED TO RECOMMEND INSPECTORS MARKS AND BRANDS

Dear Sir:

This refers to your letter of February 23rd, requesting my opinion as to whether or not a recommendation by the board of county commissioners is essential in the appointment of inspectors of marks and brands.

In reply, permit me to say Section 6960 of the Compiled General Laws reads as follows:

"It shall be the duty of the county commissioners of the various counties of this State to recommend to the Governor for appointment one or more inspectors of marks and brands of the hides of beef or marks of hogs butchered at each cattle district, or in every election precinct where the county is not divided into cattle districts, where it appears to the county commissioners to be advisable, or upon a petition of a majority of the stockmen of such cattle district or election precinct. The term of office of said inspector shall be for four years."

It appears from the provisions of the statute quoted above that in counties which have been divided into cattle districts, it is the duty of the board of county commissioners to recommend to the Governor for appointment one or more inspectors of marks and brands for each cattle district, or in every election precinct where the county is not divided into cattle districts, if it appears to the county commissioners to be advisable. It further appears under the provisions of this statute that the Governor may make the appointments upon a petition of a majority of the stockmen of the cattle district or election precinct.

In view of the language of the statute, it is my opinion that the county commissioners may recommend the appointment of inspectors, and that they may recommend the names of persons to be appointed. But under the organic law of this State and the decisions of the Supreme Court, the Governor is not required to appoint those persons recommended. The Supreme Court of Florida has held that where a statute attempts to restrict the appointing power of the Governor by limiting his choice to certain persons to be selected by some other person or persons, the same is unconstitutional and void as an infringement upon the Governor's exclusive constitutional right of appointment.

January 6, 1933.

PAYMENT OF PREMIUMS ON BONDS, BY COUNTY AUTHORIZED
FOR COUNTY COMMISSIONERS AND MEMBERS
OF SCHOOL BOARD

Dear Sir:

Replying to your favor of the 4th instant, in which you ask to be advised whether or not the premium on the bonds of the several county

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

217

officers of your county may be paid by the county or may be legally charged as expenses of the office, permit me to say:

Section 2419, Compiled General Laws, expressly authorizes the payment of the premiums on bonds of county commissioners and members of the board of public instruction, by the county and the school board. I am unable, however, to find a statute authorizing the county to pay the premiums on bonds of other officers, and I am unable to find any authority which would permit a county officer to charge the premium on his bond against the expenses of his office.

January 24, 1933.

LAW REQUIRES INSPECTION OF OFFICE AND RECORDS BY
COUNTY COMMISSIONERS EVERY THREE MONTHS

Dear Sir:

Replying to yours of the 18th instant, permit me to say Section 2196, Compiled General Laws of 1927, requiring the County Commissioners to at least every three months inspect the offices and records of certain County Officers is a valid subsisting statute at this time. The language of the statute appears to be mandatory. I do not think the statute is generally observed.

You ask to be advised whether or not the law would permit inspection by the Commissioners at periods shorter than three months. The statute does not authorize the Commissioners to make such inspections oftener than once every three months.

Allow me to suggest that you take this and similar matters up with the Attorney for your Board.

June 9, 1933.

KANNER BILL—COUNTY COMMISSIONERS BY RESOLUTION
SHOULD DIRECT THE PURCHASE OF BONDS UNDER SAME

Dear Sir:

It seems to me that the Bill you refer to, to-wit: the Kanner Bill, or House Bill No. 30, Chapter 15891, Acts of the 1933 session, is a practical workable law, and with reference to the approval of the County Commissioners, it seems to me that the Bill requires that the County Commissioners should pass a Resolution authorizing, or rather approving the powers of the State Board of Administration to buy bonds, and they, of course, shall also approve the amount of the money to be used. Such Resolution may also contain whatever restrictions, limitations and the price to be paid, and the class or series or issues to be purchased as the County Commissioners may see fit to approve; and this may be given for such period of time as in the judgment of the County Commissioners may deem is best for the interests of the county. In other words, the law

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

contemplates, as I view it, that the County Commisisoners shall approve the scheme of the purchase of the bonds, and they may practically control this matter, because they can fix the price, terms, etc. I believe if you will study the law you will find that it is clearly a workable statute.

November 18, 1933.

BOARD COUNTY COMMISSIONERS, NOT COMPTROLLER,
AUTHORIZED TO APPROVE SETTLEMENTS, AND CAN
COMPROMISE CLAIMS THAT HAVE BEEN REDUCED
TO JUDGMENT WHEN THE SAME ARE NOT
COLLECTIBLE

Dear Sir:

This acknowledges receipt of your letter of November 16th, in which you request my opinion as to the authority of a board of county commissioners to compromise certain judgments obtained on estreated bail bonds, such compromise to be effective with the surety thereon. Your communication also requests my opinion as to the function of this office in the premises.

From this letter I understand that it is definitely determined that the judgments are not collectible in full, due to the absence of assets upon which execution can be levied. The only possible asset is a piece of real estate against which there is a prior mortgage together with some \$19,000 in other judgments.

The general powers of a board of county commissioners include among others the power to make such orders concerning the care of and improvement of the corporate property of the county as may be deemed expedient, and also the power to represent the county in the prosecution and defense of all legal causes. (Compiled General Laws 1927, Section 2153.)

These judgments are entered in favor of the State of Florida for the use and benefit of the particular county. (See Sections 2827 and 8356, Compiled General Laws 1927.) The county is therefore the real party in interest, and the State is a mere nominal or formal party.

The law is well settled by a decided weight of authority that the county commissioners have the power to compromise or settle claims which the county may have prior to judgment thereon. As to the power of the board of county commissioners to compromise or settle for less than the full amount, judgments obtained by the county is a matter upon which there is a direct conflict of authority. This question has never been determined by our Supreme Court, but I am of the opinion that better reason supports the rule to the effect that such power exists, provided that the compromise is made in good faith and the judgment is not collectible in full, the usual ground of non-collectibility, of course, being insolvency. (Insolvency is used in the sense of inability to meet claims because of lack of sufficient assets out of which the same can be realized.)

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

219

In other words, I am of the opinion that the same rules of business conduct by which a prudent person is governed are applicable to a county in the management of its affairs under similar circumstances; that the power to compromise in a situation of this kind is derived from the express powers vested in the board, and that to deny the county any recovery because it cannot recover all would in many instances defeat the realization by the county of monies to which it is entitled.

I am not unmindful of the fact that such ruling may open the door to compromises or settlements that are not justified by the facts; but we must presume that county officials will discharge their duties in good faith for the best interest of the county involved. The vesting of any power carries with it the possibility of its abuse.

I am of the opinion, therefore, that a board of county commissioners in a proper case by proper resolution may accept an offer of compromise of a judgment, and direct the clerk of their board or the prosecuting attorney of the county appearing as counsel of record in the proceedings resulting in the judgment, to satisfy the same of record; and that such satisfaction will be legal and binding.

Inasmuch as the State is a mere formal and nominal party plaintiff, your office has no duty to perform in regard to authorizing or approving the compromise so made.

October 11, 1934.

BOARD OF COUNTY COMMISSIONERS—BREVARD COUNTY—NOT
AUTHORIZED TO PLEDGE BONDS ON HAND FOR LOAN, BUT
AUTHORIZED TO SELL SAME FOR BENEFIT OF
MAINTENANCE FUND

Dear Sir:

This will acknowledge receipt of your letter of October 9th, to which is attached a letter from the Honorable Noah B. Butt, of Cocoa, Florida. You request my opinion upon matter discussed in Mr. Butt's letter.

The following facts appear in Mr. Butt's letter: Special Road and Bridge District No. 5 of Brevard County had certain monies in its maintenance fund which were deposited with a bank, which deposit was secured with certain bonds. The bank went into liquidation and thereafter the liquidator made a settlement with the District which resulted in the bonds becoming the property of the District. The Board of County Commissioners now desires to borrow money to be used for the maintenance of the District and to execute its note as evidence of the loan and to secure the note by pledge of the bonds above mentioned. The question presented is: Does the Board have authority to borrow money for the maintenance of the roads in Special Road and Bridge No. 5 and to secure said loan by pledge of bonds belonging to the maintenance fund of the District?

I assume that the maintenance fund of the District was created under Section 2693, Compiled General Laws of Florida, 1927, which authorizes

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

the levy of a tax for the maintenance of special road and bridge districts organized under the general law. This Section imposes upon the Board of County Commissioners the duty to use these funds solely for the repair and maintenance of the roads and bridges within the district.

There is no statutory authority authorizing a special road and bridge district organized under the general law to borrow money to be used for maintenance purposes and to pledge the assets of the district which belong to its maintenance fund.

Under the decisions of the Florida Supreme Court, the Board of County Commissioners has only such authority as is conferred by statute. *Thursby versus Stewart*, 138 So. 742 and cases therein cited. The great weight of authority is that the fiscal agent or management of a County has no power to borrow money unless there is statutory authority therefor, either expressed or implied. 15 C. J. 573; *Wells versus Fontotoc County*, 102 U. S. 625, 26 L. ed. 122; 15 C. J. 611; *First National Bank of San Francisco versus Nye County*, 36 Nev. 123, 145 Pac. 232, Ann. Cas. 1917C. 1195.

It is sometimes difficult to determine when such a power will be implied from the statutory authority of the Board of County Commissioners to levy a tax for maintenance purposes and to expend the same solely for the repair and maintenance of the roads and bridges within the district. The rule seems to be well settled that the power of a Board of County Commissioners to borrow money will never be implied unless such implication is necessary to prevent some expressed power from becoming utterly nugatory. *Ashuelot National Bank versus School District No. 7*, 56 Fed. 197 and cases therein cited. This rule is applicable also to the present situation.

It is my opinion that the Board of County Commissioners of Brevard County does not have authority to borrow money for the maintenance fund of Special Road and Bridge District No. 5, and to secure the loan by a pledge of the bonds which belong to the maintenance fund of the District, because it does not appear that it is necessary to borrow money in order to prevent the expressed power in reference to the repair and maintenance of the roads and bridges within the district from becoming utterly nugatory. In my opinion the Board has authority to sell the bonds and to use the proceeds therefor in the repair and maintenance of the roads and bridges in the District, provided, of course, that proper provision has been made in the current budget of the District.

SECTION 4

TAX ASSESSORS

February 15, 1933.

ASSISTANT TAX ASSESSOR—COMPENSATION

Dear Sir:

Section 21 of Chapter 5596, Acts of 1907, which was brought forward as Section 721 of the Revised General Statutes of 1920, and Section 923 of the Compiled General Laws of Florida 1927, authorizes the county commissioners of the several counties, when they deem it necessary for assessment purposes, to divide their counties into taxation districts, and authorizes the county tax assessor to employ for each district an assistant assessor of taxes. It is further provided in said section that the assistant assessor of taxes shall receive as compensation for his services such fees as may be agreed upon by the county assessor of taxes, which shall be paid out of the fees or compensation allowed the county assessor of taxes for such service.

Section 64 of Chapter 5596, Acts of 1907, which was brought forward as Section 801, Revised General Statutes of 1920, and Section 1033, Compiled General Laws of Florida, 1927, provides that in counties where assistant county assessors of taxes are appointed, they may be paid by the county, if the county commissioners find that it is to the best interest of the county to do so.

Both these sections were originally a part of one and the same act of the Legislature. As I see it, there is no conflict between the provisions for the payment of assistant county assessors of taxes, as contained in the two sections. In the first place, in the absence of an agreement on the part of the county commissioners to pay said assistants, their compensation comes out of that provided for the county assessor of taxes. But on the other hand, by the provisions of the latter Section, the county commissioners have the discretion to pay the assistant county assessors out of funds of the county, if they find that it is to the best interest of the county to do so.

July 12, 1934.

COMMISSIONS OF TAX ASSESSORS FOR ASSESSING SPECIAL TAX SCHOOL DISTRICT TAXES, IN CERTAIN COUNTIES

Dear Sir:

I am in receipt of your letter of the 7th instant, making inquiry if Section 1029 (2), 1934 Supplement to the Compiled General Laws of assessing Special Tax District taxes applies to Special Tax School District taxes.

In reply I beg to say in my opinion said statute does apply to Special Tax School District taxes. This Act applies to counties having a popu-

TAX ASSESSORS

lation between 6,295 and 6,860 according to the last preceding State or Federal Census, whichever may be the later. The 1930 Census shows Dixie County to have a population of 6,419. Your Tax Assessor would, therefore, appear to be entitled to commissions on Special Tax School District taxes assessed at the rate of $1\frac{1}{2}\%$, payable respectively from each Special Tax School District in which such taxes are assessed.

October 12, 1934.

COMMISSIONS DUE TAX ASSESSOR OF OKEECHOBEE COUNTY
FOR ASSESSING TAXES PURSUANT TO PEREMPTORY WRIT
OF MANDAMUS, WHICH ASSESSMENT WAS CANCELLED
BY ORDER OF COURT UPON STIPULATION OF PARTIES
TO MANDAMUS ACTION

Dear Sir:

I have your letter to which is attached a letter from Honorable Robert La Martin, County Assessor of Taxes of Okeechobee County. The facts as they appear from the letters and information furnished subsequent thereto appear to be as follows:

On March 10, A. D. 1933, a peremptory writ of mandamus was entered in the Circuit Court of Okeechobee County in the case of State of Florida ex rel J. W. Gillespie, et al., Relators versus R. M. Durrance, et al., Respondents, whereby the Board of County Commissioners was required to levy against the taxable property of Okeechobee County for the year 1933, a sum sufficient to be raised by taxation against said property to pay the bonds and interest coupons of the Relators as described in the amended alternative writ of mandamus in that case less certain deductions. The writ ordered Robert La Martin to calculate and carry out said taxes and assess the same upon the tax assessment roll of Okeechobee County for the year 1933, and to certify the same to the Tax Collector in accordance with law. Pursuant to this writ, Robert La Martin proceeded to calculate and carry out said taxes and assess the same upon the tax assessment roll of Okeechobee County, and to certify the same according to law to the Tax Collector. Thereafter, to-wit, on April 12, A. D. 1934, the Circuit Court in Okeechobee County entered an order based upon a stipulation between the parties in the above mentioned mandamus cause whereby the Respondents were relieved and absolved from compliance with the terms of the peremptory writ above referred to and were authorized and empowered to eliminate the millage levied pursuant thereto from the tax assessment roll of the County for the year 1933.

The following questions are presented:

(1) Is Robert La Martin, as County Assessor of Taxes of Okeechobee County, entitled to commissions for assessing the 71 mill tax pursuant to the peremptory writ of mandamus dated March 10, A. D. 1933, and above referred to? and,

TAX ASSESSORS

(2) If the first question is answered in the affirmative, should the commissions be paid by the Board of Administration or by the Board of County Commissioners of Okeechobee County?

It is my opinion that:

(1) The first question should be answered in the affirmative because it appears that the County Assessor of Taxes of Okeechobee County assessed the 71 mill taxes pursuant to an order of the Court. The fact that it was later agreed between the Relators and the Respondents in the mandamus action, and an order of the Court was entered pursuant thereto that the Respondents were authorized and empowered to eliminate the millage levied pursuant to the peremptory writ, does not deprive the County Assessor of Taxes of commissions earned in carrying out the terms and provisions of the peremptory writ;

(2) These commissions should be paid in the same manner as other commissions due the County Assessor of Taxes, for assessing taxes for the payment of interest and principal on bonds of the County.

November 14, 1934.

FEES DUE TAX ASSESSOR, WHO HAS RECEIVED MAXIMUM
COMPENSATION, SHOULD BE PAID INTO COUNTY
EXCESS FEE FUND

Dear Sir:

In your letter of this date you state that the Tax Assessor of Pinellas County collected from your office (Board of Administration, I assume) as commissions on the taxes levied and assessed for the year 1932 for road and bridge bond debt-service requirements, four-fifths of the amount of such commissions, leaving a balance of \$666.68, which he could have collected upon filing application therefor, but for which no claim was made. It is stated that the \$666.68 represents the one-fifth of his commissions which had been reserved until final settlement between the assessor and the county commissioners, as required by law.

You ask to be advised if the Board of Administration is authorized to comply with the resolution of the Board of County Commissioners of Pinellas County, which is attached to your letter, by paying the reserve commission now on hand with the Board into the County Excess Fee Fund of Pinellas County.

The said resolution recites that the Tax Assessor of Pinellas County received his full compensation of \$7,500.00 for the year 1932. This being true and the said sum of \$666.68 having been earned by the office of Tax Assessor of the county for assessing the taxes for the year 1932, the same constitutes in the hands of the Board of Administration a trust fund which should go into the County Excess Fee Fund to be used by the Board of County Commissioners of the county, as provided by law.

It being a trust fund which must go into the Excess Fee Fund, "there

TAX ASSESSORS

is no reason why it should not go to that place by the most direct route," as was said by Mr. Justice Buford, speaking for the Supreme Court of Florida in *Gay vs. State ex rel McKenney*, 155 So. 845.

It was also said in the case just referred to, "a trust fund in the hands of whomever may collect it must be paid into the Excess Fee Fund set up in Chapter 11945."

It is my opinion, therefore, that the Board of Administration may and should pay the said sum of \$666.68 into the Excess Fee Fund of Pinellas County, taking proper receipt therefor.

February 9, 1933.

COMMISSIONS FOR ASSESSING TAXES FOR HALIFAX HOSPITAL
DISTRICT UNDER CHAPTER 15794, ACTS 1931

Dear Sir:

Chapter 15794, Laws of Florida, Acts of 1931, provides that the county assessor of taxes in counties having a population between 35,000 and 45,000, according to the last preceding state or federal census, shall be entitled to receive commissions for assessing special taxes and special tax district taxes at the rate of $1\frac{1}{2}\%$ upon the amount of such taxes assessed, subject to the same limitations and deductions as commissions are allowed and paid for assessing the general county taxes, but payable only from the special taxes or special tax district taxes collected.

Chapter 15794 was passed under the guise of a general act, but with a local application, and according to the federal concensus of 1930 fits only Volusia County.

By virtue of Chapter 15794 you would be entitled to your commission for assessing Halifax Hospital District taxes at the rate of $1\frac{1}{2}\%$ upon the amount of such taxes, subject to the same limitations and deductions as commissions are allowed and paid for assessing the general county taxes, provided Chapter 15794 is constitutional, as to which I express no opinion.

January 25, 1934.

FEES OF TAX ASSESSOR OF HIGHLANDS COUNTY FOR ASSESSING
SPECIAL TAXES AND SPECIAL TAX DISTRICT TAXES

Dear Sir:

I have your letter of January 15th in which you state the following: That your County has an assessed valuation of real and personal property not exceeding \$5,000,000.00; that Section 1029, Compiled General Laws of Florida, 1927, prescribes the following fees for a Tax Collector in such County, to-wit: On the first \$4,000.00, 10%, on the next \$3,000.00, 5%, and on the balance, 2%; that your County comes within the purview

TAX ASSESSORS

of Chapter 15663, Laws of Florida, Acts of 1931, which allows a Tax Assessor a commission "for assessing special taxes and special tax district taxes at the rate of $1\frac{1}{2}\%$ upon the amount of such taxes assessed subject to the same limitation and deductions as commissions are allowed and paid for assessing the general County taxes."

You request my opinion as to whether you are entitled to receive commissions for assessing special taxes and special tax district taxes at the rate of 2% or $1\frac{1}{2}\%$ upon the amount of such taxes assessed?

Chapter 15663, *supra*, is the only authority for a Tax Assessor of your County receiving commissions for assessing special taxes and special tax district taxes. Prior to the passage of this Act, a Tax Assessor in your County was required to perform these services without compensation. See the case of *Rawles vs. State*, 98 Fla. 103, 122 So. 222.

It is my opinion that your commissions for assessing special taxes and special tax district taxes are limited to $1\frac{1}{2}\%$ upon the amount of such taxes assessed.

January 13, 1934.

AMOUNT OF MONTHLY ADVANCES TO COUNTY ASSESSOR OF
TAXES BY BOARD OF COUNTY COMMISSIONERS

Dear Sir:

I have your letter of January 5th, in which you request my opinion upon the following question:

What method should be used in determining the amount of the monthly advances to be made by the Board of County Commissioners during the year A. D. 1934, to the County Assessor of Taxes?

It is my opinion that the amount of monthly advances to be made by the Board of County Commissioners during the year A. D. 1934, to the County Assessor of Taxes will be one-twelfth of four-fifths of the total amount of commissions received by such County Assessor of Taxes or his predecessor from such County during and for the year A. D. 1933. See Section 1031, Compiled General Laws of Florida, 1927.

December 6, 1933.

COMMISSIONS TO BE ALLOWED TAX ASSESSOR FOR ASSESSING
INTANGIBLE PERSONAL PROPERTY TAXES

Dear Sir:

I have your letter requesting my opinion as to what commissions you should allow and pay to a County Tax Assessor for assessing Intangible Personal Property under Chapter 15789, Laws of Florida, Acts of 1931, known as the Intangible Personal Property Taxation Act of 1931.

TAX ASSESSORS

Chapter 15789, *supra*, does not set out the commission to be received by the Assessor for performing the duties required of him by the Act. Section 6 of the Act says that the assessment of Intangible Personal Property should be on a separate roll which shall distinctly show the name and address of the taxpayer and the amount of the valuation for tax purposes. Section 1028, Compiled General Laws of Florida, 1927, provides that the County Assessor of Taxes shall be entitled to receive the following commissions upon the taxes assessed for state purposes, which commissions shall be allowed him by the Comptroller and paid to him by the Treasurer as other Comptroller's warrants are paid, to-wit: on the first \$4,000.00, 10%, on the next \$3,000.00, 5%, on the balance, 1½%.

At the time Section 1028, *supra*, became a law, the Assessor was required to assess all real and personal property without any distinction between Tangible and Intangible Personal Property. The commissions fixed by this Section were upon the theory that there would only be *one tax roll* which would include all real and personal property, although the assessment for personal property was required to be made separate from the assessment of real estate. See Section 913, Compiled General Laws of Florida, 1927. The Legislature in passing Chapter 15789, *supra*, specified that Intangible Personal Property shall be assessed by the Tax Assessor of each and every County of Florida on a *separate tax roll*.

It is my opinion in view of the above and foregoing that it was the intention of the Legislature in enacting Chapter 15789, *supra*, that the County Assessor of Taxes in each County in the State should receive the following commissions upon the amount of taxes assessed against Intangible Personal Property, to-wit: on the first \$4,000.00, 10%, and on the next \$3,000.00, 5%, and on the balance, 1½%.

The above and foregoing opinion is not in conflict with opinions rendered by me on this subject on July 19th and October 26th, 1932

January 16, 1933.

COMMISSIONS TAX ASSESSORS—SPECIAL ROAD AND
BRIDGE DISTRICT

Dear Sir:

I am in receipt of your letter of the 12th instant on the subject of payment of commissions to tax assessors for assessment of special road and bridge district taxes.

Sections 1028 and 1029, Compiled General Laws of 1927, do not provide for such payments, and the Supreme Court decision in the case of *Rawles et al vs. State ex rel Nolan*, 98 Fla. 103, 122 So. 222, so held.

Hon. Fred H. Davis, former Attorney General, in his opinion of August 2, 1930, as shown by his printed report for 1929-1930 on page 228, stated that the effect of Chapter 14486, Acts of 1929, passed subsequent to the Supreme Court decision in the above mentioned *Nolan* case, is to

TAX ASSESSORS

recognize taxes levied and collected in special road and bridge districts as a part of a general county tax fund to be administered as such by the same official who handles other admittedly county funds and that special taxes levied in road and bridge districts to support bond issues of said districts are now to be considered as special taxes within the purview of Section 1028, Compiled General Laws, which entitles the county assessor of taxes to receive a commission on the assessment of the same.

He further stated as follows:

"I therefore give it as my opinion that the county assessor of taxes is now entitled to receive commissions for the assessment of special road and bridge district taxes in all cases where such taxes are required by law to be remitted to the county treasurer ex officio, and administered by the State Board of Administration under Chapter 14486, and that such commissions should be paid in that respect as other commissions of the county tax assessor are paid."

In view of the above opinion of former Attorney General Davis, which has served as a guide to officials for more than two years, and under the doctrine of *Stare Decisis*, I do not feel that such opinion should be disturbed unless the Supreme Court should decide otherwise.

January 30, 1933.

TAX ASSESSOR AND COLLECTOR—METHOD OF DETERMINING COMMISSIONS

Dear Sir:

Replying to your letter of the 30th instant, it is my opinion that in computing the total assessed valuation of a county for the purpose of determining the rate of commissions to be paid the county tax assessor and county tax collector, the assessment of intangible property should be included with that of real and tangible personal property valuations.

This applies in case of commissions paid by the county as well as by the State.

February 2, 1933.

ASSESSOR'S COMMISSIONS FOR ASSESSING LANDS WHICH WERE SOLD TO STATE FOR NON-PAYMENT OF TAXES FOR PRECEDING YEAR

Dear Sir:

With reference to commissions for County Tax Assessors for assessing lands which were sold to the State for non-payment of taxes for the preceding year, I beg to advise that Section 984, Compiled General Laws

TAX ASSESSORS

of Florida, 1927, provides that in making up the assessment roll, the Assessor shall place thereon the lands certified to them by the Comptroller as having been sold to the State for taxes, and shall enter their valuations of the same on the roll and mark against such lands on the roll the words "State tax certificate," and shall not extend the amount of the taxes on said land.

This statute contemplates that the authority for not extending the taxes by the Assessor is that he shall be furnished a certificate from the Comptroller stating that the land has been sold to the State for non-payment of taxes. In all cases where the Comptroller has not furnished the Tax Assessor such certificate at the time of making up his assessment roll, I think the Assessor would be authorized to extend the amount of taxes on the roll and entitled to his commissoin therefor.

If he has been furnished by the Comptroller with such certificate in time for noting on the assessment roll the words "State tax certificate" as required by said Section, then he would not be entitled to any commission.

April 4, 1933.

PAYMENT OF COMMISSIONS FOR ASSESSING SPECIAL TAX
SCHOOL DISTRICT TAXES UNDER CHAPTER 15048, ACTS 1931

Dear Sir:

I am in receipt of your letter of March 30th, in which you ask my opinion on Chapter 15048, Laws of Florida, Acts of 1931, with reference to the payment of the tax assessor's commissions for assessing special tax school district and other special taxes.

On account of the peculiar wording of this Act it seems to me that the tax assessor is entitled to have his commission for assessing such taxes paid only out of the taxes collected. That is, when enough of the special tax district taxes have been collected, he would be entitled to have all his commissions for assessing such special district taxes, paid. If the Act had read that the commissions were to be paid from the special tax district funds, instead of from the special tax district taxes collected, then I think he would have been entitled to be paid from such fund at any time there were sufficient funds on hand to pay his commission, in the same way that other commissions are paid.

But we have to construe the Act as it reads, and to do so seems to make the commissions payable only from the taxes as and when collected. However, the failure to collect a part of such taxes would not defeat the payment of commissions thereon.

TAX ASSESSORS

April 11, 1934.

PAYMENT OF TAX ASSESSORS ADVANCE COMMISSIONS FOLLOWING IMPOUNDING OF FUNDS BY MANDAMUS

Dear Sir:

This is in response to your communication of April 10, 1934. You advise that application properly approved by the county commissioners and certified by the Clerk has been filed by the Tax Assessor of Sarasota County for the first quarter's advance commissions for taxes assessed on the 1934 tax roll, and that such is in the proper amount based upon last year's levy and assessment for account of road bond debt-service requirements. You advise also that all funds in your custody derived from sources other than the Gas Tax are impounded under six mandamus suits now pending; and that as to the Gasoline Tax moneys, this county has not certified its policy under the Kanner Bill.

It is my opinion that the impounding of ad valorem tax funds by mandamus does not prevent you from paying out of such funds the necessary expenses of collection; and included therein is the tax assessor's commission. Otherwise, the mere filing of a mandamus proceeding and an impounding of such funds might bring about the stopping of the machinery of collection of future funds.

March 14, 1934.

PAYMENT OF COMMISSIONS DUE TAX ASSESSORS AND TAX COLLECTORS UPON THE FOLLOWING STATE TAX LEVIES FOR THE TAX YEAR OF 1933

Dear Sir:

State School Fund 1 Mill, Sec. 6, Art. XII, Const.

Pension Fund $3\frac{1}{2}$ Mill, Sec. 2111, C. G. L.State Board of Health $\frac{1}{2}$ Mill, Chap. 16179, Acts 1933.Live Stock Sanitary Board of Tick Eradication $\frac{1}{2}$ Mill, Chap. 16287, Acts 1933.Prison Fund $\frac{3}{8}$ Mill, Sec. 8615, C. G. L.Free Text Book Fund $\frac{3}{4}$ Mill, Sec. 889, C. G. L.

Replying to your letter of March 5th, on the above subject, it is my opinion that commissions due the Tax Assessors and Tax Collectors for assessing and collecting the taxes represented by the above mentioned levies should be allowed by the Comptroller from the funds collected.

The statutes contemplate that these commissions shall be paid out of the funds assessed and collected and not made a charge against the State to be paid out of the General Revenue Fund.

This opinion is in conformity with an opinion rendered by my predecessor in office (now Chief Justice of the Supreme Court of Florida),

TAX ASSESSORS

the Honorable Fred H. Davis, on November 10, 1930, to the Honorable Ernest Amos, State Comptroller, on the subject of the payment of commissions due Tax Assessors and Collectors for assessing and collecting taxes levied for the purpose of paying interest and principal on County-wide bonds, which letter reads as follows:

"In re: Payment of Commissions for Tax Assessors Where Allowed Upon County Wide and Other Road and Bridge District Bonds.

"Replying to your letter of October 29th on the above subject, I beg to advise that allowable commissions of tax assessors and tax collectors for assessing and collecting taxes, the proceeds of which are levied and collected for countywide bonds to pay interest and sinking fund, should be allowed by the county commissioners and deducted from the funds collected before they are remitted to the State Board of Administration. In the event that remittances have already erroneously included commissions which should have been deducted, I see no legal obstacle which will prevent the State Board of Administration from returning such excess funds to the county officers who are entitled to the same.

"The statute contemplates that these commissions shall be paid out of the funds assessed and collected and not made a charge against the county to be paid out of the General County Funds."

December 31, 1934.

SALARIES—COMMISSIONS OF

Dear Sir:

I am in receipt of your letter of the 10th instant, enclosing copy of communication from Hon. ———, Tax Assessor of Jackson County, under date of the 4th instant. The second paragraph of Mr. ——— letter, as quoted by you, reads as follows:

"If a property owner fails to comply with the law during the period for returning either real or personal property and later on applies to the board of county commissioners or the tax collector and secures a reduction or an exemption, should such items adjusted be chargeable to an assessor as an error, after the assessor has to the best of his or her ability complied with the law to a letter, while the property owner has failed to make any effort in the direction of complying with the statutes."

In reply I beg to refer you to Section 917, Compiled General Laws of Florida, 1927, making it the duty of every person owning or having the control of property, subject to taxation, to return the same for taxation on or before first day of April each and every year. You will note that said Section provides that upon failure to make such return the assessment and valuation made by the Assessing Officer shall be held to be binding "unless complaint is made of such assessment and valuation on

TAX ASSESSORS

the day set for hearing complaints and receiving testimony as to the valuation of any property, real or personal, as fixed by the County Assessor of taxes.

Your attention is further called to Section 897, Compiled General Laws of Florida, listing certain properties as exempt from taxation.

Your attention is further called to Section 932, Compiled General Laws of Florida, 1927, reading as follows:

"The county assessors of taxes in this State shall receive no compensation for assessing lands which are not subject to taxation."

Your attention is further called to Section 1028 of said Compilation, the first paragraph of which reads as follows:

"The county assessor of taxes shall be entitled to receive the following commissions upon the amount of taxes, general or special, assessed, but not on each separately, *excluding errors*, to-wit:."

In consideration of the above and particularly Section 932 and that part of Section 1028, as copied, it is my opinion that the Tax Assessor is not entitled to commissions for assessment of property when the same is exempt from taxation, nor to commissions on any exempt part of any property assessed even though the property owner fails to comply with his duty in making return of his property and claiming exemption at the time required by law and later applies for and secures an exemption on the same.

In this connection, I beg to say in my opinion the County Commissioners have no authority to reduce the valuation of property after they have adjourned as a Board of Tax Equalizers and after the tax roll has passed out of their hands. See *Sparkman, Tax Assessor, vs. State*, 71 Fla. 210, 71 So. 34; See also Sections 929 and 931, Compiled General Laws of Florida, 1927.

Neither, in my opinion, is a Tax Collector authorized to reduce or change the valuations as they appear on the tax roll, but he may allow an exemption when proof of claim is made to him that the property in whole or in part was exempt from taxation on January 1st of the year for which it was taxed.

November 9, 1933.

**FEES—FORMER TAX ASSESSOR ENTITLED TO, FOR BALANCE OF
COMMISSIONS DUE HIM ON TAX ROLL**

Dear Sir:

This is in response to your communication of November 9th, asking whether or not the claim of a former tax assessor of Hardee County, who

TAX ASSESSORS

was succeeded on January 1st, 1933, by the present incumbent, is entitled to receive payment for the balance of commissions due him on the tax roll for the year 1932, the last year of his term.

We understand that this is in the nature of a final settlement, and the claim has been audited and approved by the board of county commissioners and certified by the clerk thereof under official seal.

It is my opinion that under the decision of the Supreme Court in the case of Lee vs. Smith, 149 So. 67, these fees follow the officer and not the office, and that the prior incumbent is entitled to payment of the same. We must presume, of course, that the said certificate of the board of county commissioners means that such prior incumbent did not receive the maximum compensation allowed by law, or else such board would not have certified to any amounts due.

SECTION 5

TAX COLLECTORS

January 30, 1933

TAX COLLECTOR NOT ENTITLED TO COMMISSIONS UNDER SEC.
1033 OR 1034 C. G. L. WHEN PROPERTY SOLD*Dear Sir:*

With reference to whether tax collectors are entitled to commissions under Sections 1033 and/or 1034 of the Compiled General Laws, in case of tax sales and collection of the 5% commission collected from purchasers of certificates under Chapter 15798, Acts of 1931, I beg to advise that they are not entitled to the regular commissions under Section 1033 and/or 1034 of the Compiled General Laws of Florida.

Sections 1033 and 1034 provide commissions for collecting taxes in the usual way, that is, without sale. When property is sold for the non-payment of taxes, then the commission provided for in Section 970, Compiled General Laws, as amended by Chapter 15798, Acts of 1931, applies.

June 5, 1934

TAX COLLECTOR NOT ENTITLED TO COMMISSION FOR COLLECT-
ING DELINQUENT RAILROAD TAXES*Dear Sir:*

In your telegram of yesterday you state:

"Hernando County recently received between five and six thousand dollars by the Seaboard and Brooksville and Inverness and Tampa Northern Railroads as a compromise settlement of taxes for nineteen hundred twenty six to nineteen thirty-three inclusive. Am I entitled to commission on this sum of money."

You did not state whether the matter in which the compromise was effected was in litigation, but assuming that it was, it is my opinion that you would not be legally entitled to a commission on the amount of taxes received. Judge Fred H. Davis, while Attorney General, held that in cases where railroad taxes are paid to the Comptroller merely for convenience and prior to delinquency, the tax collectors would be entitled to their commission. In this case, however, the taxes were all delinquent when payment was made.

The main point is that no provision in law has been made for the payment of commission in cases such as stated in your telegram.

In *Rawls et al vs ex rel Nolan*, 98 Fla. 103, 122 So. 222, the Supreme Court of Florida held that public officers have no legal claim for official services rendered, except when and to the extent that compensation is provided by law, and when no compensation is provided, rendition of such

services is deemed to be gratuitous. That was a case, however, where services had been rendered by a tax assessor.

In the case of railroad taxes paid pursuant to the compromise of litigation, there is no service by the tax collector other than that of certifying delinquency to the Comptroller, for which no compensation is provided by law.

March 6, 1934

TIME OF PAYMENT TO TAX COLLECTOR OF FIFTEEN CENTS FOR
ISSUING A TAX SALE CERTIFICATE

Dear Sir:

I have your letter of March 1st in which you request my opinion upon the following questions:

"Whether or not the Tax Collector is entitled to his fifteen cents (15¢) for each certificate for sale as soon as same has been certified to the Clerk of Circuit Court."

Section 970, Compiled General Laws, 1932 Supplement, reads in part as follows:

"When lands are advertised for taxes under the provisions of this law the Tax Collector shall be entitled to fifteen cents (15¢) for certification of sale and shall be entitled to five per cent (5%) commission on the amount of each delinquent tax when actual sale is made, but said Tax Collector shall not be entitled to any commission for the sale of such property made to the State of Florida until said commission is paid upon the redemption or sale of the tax certificate or certificates issued thereon to the State."

It is my opinion that the Tax Collector is entitled to be paid fifteen cents (15¢) for each tax sale certificate issued by him. If the certificate is issued to an individual, the fifteen cents (15¢) will be included in the amount bid for the certificate and will be paid when the certificate is delivered by the Tax Collector to the purchaser. If the certificate is made out in the name of the State, the Collector will be entitled to receive his fifteen cents (15¢) as soon as the same is delivered to the Clerk of the Circuit Court.

January 13, 1934

COMMISSIONS ALLOWED TAX COLLECTOR FOR COLLECTING
INTANGIBLE PERSONAL PROPERTY TAXES

Dear Sir:

I have your letter in which you request my opinion as to what commissions you should allow and pay to the County Tax Collector for collecting Intangible Personal Property Taxes.

TAX COLLECTORS

Chapter 15789, Laws of Florida, Acts of 1931, known as the Intangible Personal Property Taxation Act of 1931, does not set out the commissions to be received by the County Tax Collector for performing the duties required of him by the Act. Section 1033, Compiled General Laws of Florida, 1927, is the only Section of the statutes which prescribes the commissions to be allowed a County Tax Collector for collecting State taxes.

The commissions for collecting State taxes as fixed by Section 1033, supra, were upon the assumption that the rate of taxation to be applied to the assessed value of Intangible Personal Property would be the same as the rate applied to Real and other Personal Property. Chapter 15789, supra, limits the rates to be levied against this class of property so that the tax against a given amount of such property is materially less than it would have been prior to the time this law took effect.

It is my opinion that it was the intention of the Legislature in enacting Chapter 15789, supra, that the County Tax Collector in each County of the State should receive the following commissions upon the amount of taxes collected from Intangible Personal Property, to-wit: on the first \$4,000.00, 10%; on the next \$3,000.00, 5%; and on the balance, 1½%.

January 30, 1933

10% COMMISSION ON FIRST \$4000.00 GOES TO OFFICE OF
TAX COLLECTOR

Dear Sir:

Section 1034, Compiled General Laws of Florida 1927, fixing the commissions of county tax collectors, contemplates the fees prescribed therein to be payable to the office as distinguished from any particular officer or officers. In other words, the office is only entitled to 10% on the first \$4,000 collected, regardless of whether this amount was collected by one or more officers.

In other words, if your predecessor in office had already collected \$4,000 on the 1932 tax roll, you are not entitled to 10% on any part of the collection made by you. To carry this still farther, if he had before he retired collected \$7,000 on the 1932 tax roll, then you will only be entitled to 2% on the amount actually collected by you.

February 6, 1933.

NOT ENTITLED TO FEES FOR COLLECTING LICENSES UNDER
CHAPTER 15634, ACTS 1931

Dear Sir:

Replying to your favor of February 2nd, in which you ask to be advised whether or not the tax collector under Chapter 15634, Laws of

TAX COLLECTORS

Florida, Acts of 1931, is entitled to retain for his compensation 25¢ of the filing fee collected on licenses issued under said Chapter, permit me to say Section 13 of said Chapter provides that:

"The county judge of each county shall be entitled to a fee of 25¢ for each license issued by him, which shall be paid out of the filing fee herein provided for."

I do not find that any section of the Chapter provides for compensation to the county tax collector in connection with the issuance of licenses provided for by said Chapter.

In the case of *State ex rel Nolan vs. Rawls et al*, 98 Fla. 103, 122 So. 222, the Supreme Court said:

"Public officers have no legal claim for official services rendered except when and to the extent that compensation is provided by law, and when no compensation is so provided, rendition of such service is deemed to be gratuitous."

In view of the Supreme Court opinion, it is my opinion that any service rendered by the tax collector in connection with the issuance of licenses under Chapter 15634, Laws of Florida, Acts of 1931, will have to be deemed to be gratuitous service, for which no compensation shall be allowed.

March 29, 1933.

COMMISSIONS FOR COLLECTING COUNTY WIDE SCHOOL TAXES
TO BE PAID BY COUNTY COMMISSIONERS

Dear Sir:

Complying with your verbal request for an opinion as to the payment of the county tax collector's commissions for collecting county wide school taxes, I beg to advise that Section 1033 of the Compiled General Laws of Florida 1927, provides that the commissions for collecting county taxes shall be audited and allowed by the county commissioners.

Audited and allowed as used in this connection means audited, and if found correct, paid by the county commissioners. This law makes no difference between school taxes and general county taxes, but the commission is on the aggregate of all county wide taxes, which includes the general school tax because it is a county tax, although for school purposes.

It is my opinion, therefore, that the tax collector's commissions for collecting the general county school taxes must be audited and paid by the county commissioners from the same fund and in the same way that commissions to the tax collector are paid for collecting the general county taxes.

TAX COLLECTORS

June 23, 1933.

ENTITLED TO COMMISSIONS FOR ASSESSING SPECIAL TAX
SCHOOL DISTRICT TAXES ONLY WHEN LAW
AUTHORIZES SAME

Dear Sir:

Replying to your letter of June 20th, permit me to say unless a special act has been enacted by the Legislature, providing for it, the tax assessor is not entitled to commissions for assessing special tax school district taxes. See *Rawls vs. State ex rel Nolan*, 98 Fla. 103, 122 So. 222.

Where a special act does authorize payment of such fees, the same should be paid from the special tax school district taxes assessed and collected, unless otherwise provided in the Act. The commissions for assessing and collecting the general county school tax are payable by the board of county commissioners.

Under the Futch Bill bonds of a special tax district lying wholly within the county must be accepted at par for the payment of all taxes, where a tax certificate is held by the State, except State taxes, and of course, neither State nor county nor other taxes for 1932 can be paid with any anything but cash.

April 18, 1934.

CERTIFICATE OF INDEBTEDNESS—RECEIVABLE BY TAX
COLLECTOR IN PAYMENT OF DELINQUENT
COUNTY SCHOOL TAXES

Dear Sir:

This acknowledges receipt of your communication of April 14, 1934, in which you enclose a copy of a certificate of indebtedness issued by the Board of Public Instruction of Okaloosa County in previous years, which is in words and figures as follows, to-wit:

"\$125.00.

"Crestview, Fla., 5-14-1929.

"State of Florida, Okaloosa County:

"The Board of Public Instruction of Okaloosa County, Florida, hereby certifies that it is indebted to John Doe in the amount of One Hundred Twenty-five Dollars which will be paid to the holder of this certificate from the first available funds, together with interest at eight per cent per annum from date.

"Board of Public Instruction,
Okaloosa County, Florida.

"By

"Chairman.

"Attest

County Superintendent."

TAX COLLECTORS

I understand that certificates of indebtedness similar to the above were issued to evidence an indebtedness then due by the Board of Public Instruction, but which was not paid because of insufficient current funds.

You ask whether or not such outstanding current and unpaid certificates of indebtedness issued under such circumstances, and of which the above is a typical example, are receivable for delinquent county school taxes under Section 507, Compiled General Laws of 1927.

It is my opinion that such are receivable by the county tax collector under said Section 507, at their face amount with no allowance for interest.

Such certificates of indebtedness issued merely to evidence an existing obligation for current operating expenses are not of the same class as time warrants or other written obligations issued in lieu of bonds, and which were covered by my prior opinions of August 18, 1933, and January 20, 1934, both addressed to the Honorable J. M. Lee, Comptroller.

The validity of such certificates of indebtedness as are involved in this opinion, and their enforceability, were specifically upheld in Board of Public Instruction of Okaloosa County vs. Kennedy, 147 So. 250, except as to the provision for interest.

November 28, 1934.

CERTIFICATES OF INDEBTEDNESS—RECEIVABLE BY TAX
COLLECTOR IN PAYMENT 1934 SCHOOL TAXES

Dear Sir:

In your letter of November 27th, you enclose a form of a certificate of indebtedness issued by the Board of Public Instruction of Okeechobee, which reads as follows:

"Okeechobee, Florida,

"December 31, 1932.

"Certificate of Indebtedness

"\$711.03

No. 155

"The Board of Public Instruction for Okeechobee County, State of Florida, acknowledges itself to owe and hereby promises to pay to the order of *John Doe* the sum of *Seven Hundred Eleven and 03/100¢* for services rendered as *Teacher School No. 1* or for supplies furnished in the operation of the public schools of said County during the fiscal years 1930-31 and 1931-32 with interest at the rate of *eight (8%)* per cent per annum until paid.

TAX COLLECTORS

"Due on or before *December 31, 1933*, or when funds are available. Authorized in open session.

"-----
Secretary to Board

"-----
Chairman Board of Public Instruction.

"Balance due."

You state the following:

"Certificates of indebtedness in this form have been issued by your Board prior to 1933 and many of them are now outstanding and unpaid because the taxes levied and assessed for their payment have not been collected; the holders of some of these certificates are now tendering them to the Tax Collector in payment of the taxes levied and assessed for the tax year A. D. 1934 for general school operation purposes of the school year 1933-1934; no provision was made in the budget of the Board of Public Instruction for the school years 1932-1933 and 1933-1934 for the payment of these certificates; that there are more than enough of these certificates outstanding to absorb all of the taxes levied and assessed for general school operation purposes for the school year 1933-1934."

You request my opinion as to whether or not the Tax Collector is required to accept these certificates in payment of the taxes levied for general school operation purposes for the school year 1933-1934.

In response to your letter I, today, telegraphed you as follows:

"In re your letter November twenty-seventh period tax collector may accept certificates of indebtedness referred to in your letter in payment of current taxes levied for general school operating purposes provided Board Public Instruction included in current budget item for payment of the certificates stop am writing you fully."

It is my opinion that under the terms of Section 507, Compiled General Laws, 1927, the certificates of indebtedness issued prior to 1933, and above referred to, may be accepted to the extent of their face or par amount, but without interest, by the tax collector in payment of taxes levied and assessed for general school operation purposes for the school year 1933-1934, which are taxes levied and assessed upon the 1934 tax roll; provided, that provision for the payment of these certificates was made in the budget of the Board of Public Instruction for the school year 1933-1934. At the time the certificates were issued, there was no law authorizing the payment of interest thereon, and it does not appear that under the contract under which the services were rendered, and for which the certificates were issued, contemplated the payment of interest if the services were not paid for when due. If the contract for the services contained an agreement to pay interest upon a certificate of indebtedness that might be issued to evidence the debt, then the present certificates would bear interest according to the stipulation

TAX COLLECTORS

contained therein, and the amount due as accrued interest on each certificate may be accepted by the tax collector in payment of the taxes to the same extent and in the same manner as the face or par amount of the certificate. See Board of Public Instruction of Okaloosa County versus Kennedy, 147 So. 250.

My opinion of April 18, A. D. 1934, concerning certificates of indebtedness issued by the Board of Public Instruction of Okaloosa County should be read and considered in the light of what has been said herein.

August 18, 1933.

**MOTOR VEHICLE COMMISSIONER AUTHORIZED TO FIX AMOUNT
OF BOND FOR TAX COLLECTOR IN CONNECTION
WITH HANDLING LICENSE TAGS**

Dear Sir:

This acknowledges receipt of your letter of August 16th, in which you ask for my opinion relative to Chapter 16058, Acts of 1933, (Senate Bill 47) particularly as the same applies to the bonds required by subparagraph 5 of Section 1 of said Act.

The bond required by this Act is a bond entirely separate from the bond given generally by tax collectors. Such bond may be a surety bond payable to the State Motor Vehicle Commissioner and his successors in office, conditioned that the tax collector will faithfully and truly perform the duties imposed upon him * * * and that he will well and truly pay over and account for all license plates, records and other property and money. The amount of such bond is to be fixed by you and is to be in proportion to the amount of accountability likely to arise.

It is obvious, therefore, that this is a bond in addition to the general tax collector's bond, and is a special bond covering their activities regarding your Department.

February 28, 1934.

**BONDS—IT IS WITHIN THE AUTHORITY OF COMPTROLLER TO
APPROVE SETTLEMENT MADE BY STATE ATTORNEY
WITH SURETY ON TAX COLLECTOR'S BOND**

Dear Sir:

This is in response to your inquiry of February 27th, 1934, in which you ask for my opinion as to whether or not it is your duty and within your authority as Comptroller to pass upon and approve or disapprove settlements made by a State Attorney with a surety company on the bond of a defaulting county tax collector; and whether in making such approval it is necessary for you to have any recommendation touching

TAX COLLECTORS

the same made by the board of county commissioners or board of public instruction of the county in which the claim arose.

The bond involved was placed pursuant to the provisions of Sections 2416 and 2417, Compiled General Laws of 1927, and runs to the Governor of the State of Florida and his successors in office. The matter involved concerns, as does this opinion, solely the question of a compromise or settlement with the surety on such bond.

It is my opinion that under the provisions of Sections 4748, 4749, 4750, 4752, 4753, and 4767, you do have authority to approve or disapprove the compromise or settlement of such matters. This opinion is based upon the theory that the intention of the Legislature as evidenced by the statutes having to do with the bond and the handling of claims arising thereon, was to make such a claim a demand in favor of the State to be handled by the State Attorney, subject to your approval as to a compromise or settlement; and requiring the State Attorney to institute proceedings thereon, should the same become necessary. The claim is none the less a claim or demand in favor of the State, merely because upon such claim or demand being realized the State holds the proceeds thereof in trust for some of its subdivisions or governmental agencies.

It is therefore my opinion that it is within your authority as Comptroller to pass upon and approve or disapprove such settlements, and that it is not necessary for you to have any recommendation touching the same by any board or other governing body of any political subdivision of the State that might be interested in the proceeds of such settlement or compromise.

SECTION 6

CLERKS OF CIRCUIT COURT

July 24, 1933.

PROVIDED WITH CERTAIN RECORD BOOKS BY COUNTY
COMMISSIONERS*Dear Sir:*

Replying to yours of July 21st, permit me to say under the provisions of Senate Bill No. 313, Chapter 16079, Acts of 1933, it is the duty of the Board of County Commissioners to furnish the Clerk of the Circuit Court such record books as may be necessary for proper recording and indexing of Bills of Sale, Conditional Bills of Sale, Retain Title Contracts, Chattel Mortgages and any other instrument affecting the title to personal property.

Section 2 of the Act provides that it shall be the duty of the Clerks of the Circuit Court in the State of Florida to properly record and index, both direct and reverse, in the record books provided for such purpose all Bills of Sale, Conditional Bills of Sale, Retain Title Contracts, Chattel Mortgages and any other instruments affecting the title to personal property.

You will note that Section 1 makes it the duty of the Board of County Commissioners to furnish such record books as may be necessary. In view of this provision it seems to me that it is up to the Clerk of the Court to determine whether or not additional record books are necessary.

August 16, 1934.

SOUTH FLORIDA CONSERVANCY DISTRICT TAX SALE CERTIFI-
CATES—FEE FOR CANCELLATION NOT AUTHORIZED*Dear Sir:*

I am in receipt of your letter of the 11th instant, relative to fees of the Clerk of the Circuit Court for cancellation of South Florida Conservancy District Tax Certificates.

In reply to your inquiry as to what fees the Clerk is entitled to have for canceling certificates under these circumstances, I beg to say that I fail to find any statutory provision for fees to the Clerk of the Circuit Court for cancellation of tax certificates.

August 21, 1934.

RECORD OF TAX SALE LIST AND FEE OF CLERK CIRCUIT COURT
FOR SAME*Dear Sir:*

I am in receipt of your letter of the 18th instant, with reference to Section 976, Compiled General Laws of Florida, 1927, requiring the Tax

Collector to make out a list, in triplicate, of all lands sold for taxes and to transmit one of such lists to the Comptroller and to the Clerk of the Circuit Court, and requiring the Clerk to enter the same in a book to be provided by the County Commissioners for which he shall be entitled to receive the same fees for such record as is paid for other recording, every five figures to be counted as one word, one-half of such fee to be paid by the State and one-half by the County.

You make inquiry if the filing of the list meets the requirements of the statutes and if when filed but not recorded the Clerk is entitled to the fee provided.

In reply I beg to say that in my opinion the statute contemplates that such list of tax certificates shall be recorded and not simply filed in the office and for such services the Clerk is entitled to the fees prescribed by the statute.

September 25, 1934.

**FEES OF CLERK—FOR REDEMPTION TAX SALE CERTIFICATES
AS PRESCRIBED BY LAW MUST BE COLLECTED**

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry if it is lawful for you as Clerk of the Circuit Court to make a charge for services in the redemption of State or individual tax certificates less than the fee prescribed by law and if the Clerk has a legal right to rebate the party redeeming or purchasing such certificates.

In reply I beg to call to your attention the decision of our Supreme Court in the case of *State ex rel. Buford vs. Spencer*, 81 Fla. 211, 87 So. 634, the first headnote of which reads as follows:

"Fees collected by officer represent the charge which the state makes for services rendered by it through its officers, and constitutes a fund subject to the control of the state and to be applied as the Legislature directs."

Under this decision, it appears that the fees, above mentioned, are fees of the office and not of the officer, and that you are required in all cases to charge the fees prescribed by law.

February 20, 1934.

**NO AUTHORITY UNDER FUTCH BILL TO ACCEPT BONDS IN RE-
DEMPTION OF LANDS WHERE TAX CERTIFICATE IS NOT
TWO YEARS OLD—ISSUED UPON SALE THEREOF**

Dear Sir:

I have your letter of February 20th in which you request my opinion upon the following question:

CLERKS OF CIRCUIT COURT

Does the Clerk of the Circuit Court have authority to permit the redemption of lands by the use of bonds under the terms of Chapter 16252, Laws of Florida, Acts of 1933, known as the Futch Bill, from taxes levied for the year 1931, when the tax sale certificate is now owned by the State but will not become two years old until August 1st of this year?

I quote the following from the opinion of the Court in the case of *State ex rel Dowling vs. Butts*, reported in 149 So. 746:

"The tax sale certificates issued upon the sale of the lands to the state for the unpaid taxes for the year 1931 referred to in Section 1 of the act do not become subject to the provisions of the act until the expiration of the two-year period of redemption from the date of the tax sale certificates issued in 1932 or thereafter for unpaid taxes assessed for the year 1931. This is so because during the two-year redemption period all tax sale certificates are subject to sale and redemption under the provisions of law which require and provide for uniformity and equality in taxation. Sales and redemptions of tax sale certificates held by the state during the two-year redemption period constitute an integral part of the established uniform tax collection procedure of the state."

"A constitutional interpretation of the provisions of sections 8 and 7 of Chapter 16252 requires that such provisions be limited to tax sale certificates issued for unpaid taxes assessed for the year 1931 and prior years and held by the state after the initial redemption period of two years from the date of the tax sale certificate. The requirements of uniformity and equality of taxation are that taxes be paid in money including tax collections so nomine and also receipts from sales or redemption of tax sale certificates within the initial two-year period allowed for redemptions."

Based upon the authority of the above quotations, it is my opinion that Clerk of the Circuit Court does not have authority to permit the redemption of lands by the use of bonds, under the terms of the Futch Bill, from taxes levied for the year 1931, when the tax sale certificate is owned by the State but is not two years old. The 1931 taxes do become subject to the provisions of the Futch Bill until the tax sale certificate issued for the non-payment thereof has become more than two years old. The fact that the property owner now offers to pay interest on the delinquent taxes until August 1st does not affect the conclusion reached by me.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

245

February 20, 1934

AUTHORITY TO DISTRIBUTE TO CITIES AND TOWNS PROCEEDS
FROM COLLECTION OF DELINQUENT TAXES UNDER
SECTION 2453, C. G. L.

Dear Sir:

I have your letter of February 16th requesting my opinion upon the following question:

Is the Clerk of the Circuit Court required under Section 2453, Compiled General Laws of Florida 1927, to distribute to cities and towns one-half of the proceeds derived from the redemption of lands located therein from that part of the delinquent taxes levied "for road and bridge purposes?"

This Section authorizes the Board of County Commissioners to levy an annual tax for "road and bridge purposes" and requires "that one-half the amount so realized from said special tax on the property in incorporated cities and towns, shall be turned over to said cities and towns, * * *."

It is the duty of a Clerk of the Circuit Court to distribute to the proper County funds all moneys received from tax redemptions which were levied for County purposes. See Chapter 15918, Laws of Florida, Acts of 1933.

It is the duty of the Board of County Commissioners to distribute to the cities and towns all money due them under Section 2453, *supra*. See Hillsborough County vs. State, 57 Fla. 50, 48 So. 976; Dade County vs. City of Miami, 77 Fla. 786, 82 So. 354.

It is my opinion that the Clerk of the Circuit Court is not required under Section 2453, *supra*, to distribute to cities and towns one-half of the proceeds derived from the redemption of lands located therein from that part of the delinquent taxes levied "for road and bridge purposes."

December 11, 1933

COMPTROLLER AUTHORIZED TO SETTLE ACCOUNT IN RE STATE
FUNDS LOST IN ROBBERY

Dear Sir:

This is in response to your inquiry of December 8, 1933, wherein you advised that the sum of \$307.10, representing the refund due the State from juror and witness funds advanced to the Clerk of the Circuit Court of Duval County, was stolen from his office. You ask for my opinion as to whether or not, if you are satisfied that the robbery actually existed, you have authority to settle this account with the said Clerk.

It is my opinion that Sections 142 et seq., Compiled General Laws of Florida, placing upon you the responsibility and duty of examining,

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

auditing, adjusting, and settling the accounts of all officers of the State or other persons by whom State property, funds or money may have been received, give you the authority to settle this account.

In the exercise of this authority you should be satisfied that the robbery actually took place, and that the money was lost through no negligence or lack of care on the part of the Clerk in protecting such funds. What is sufficient evidence to satisfy you of these matters is for you to determine in the exercise of your sound discretion in the premises, and I suggest that you be governed by your ordinary business judgment.

Being satisfied of the above, and also the amount involved, you have the legal authority to settle the matter.

November 8, 1933

CLERK CIRCUIT COURT ENTITLED TO FEES EARNED DURING HIS
INCUMBENCY

Dear Sir:

I acknowledge receipt of your letter of the 6th instant, with reference to fees due the former clerk of the circuit court of your county in civil matters.

The clerk's compensation in civil cases is paid entirely by fees, and he is entitled only to fees for services rendered during his incumbency. In other words, he gets so much for filing papers, so much for issuing process, and for other services.

Now, under the rule of the Court in the Smith-Lee case, until he has received his maximum, he is entitled to fees for all services rendered by him up to the time of his going out of office, but he would not be entitled to fees for services rendered subsequent to the time of his going out of office. In other words, if a deposit was made for costs in a civil case, that in my opinion is a matter between him and the litigant, and you would have the right and I think it would be your duty to demand of the litigant the payment of your fees for services rendered in any case not completed during the incumbency of your predecessor.

If he has been overpaid by deposit or otherwise, that is a matter between him and the litigants or the litigants' attorney, and not between you and the former clerk. On the other hand, if anything is due him that has not been paid, that likewise is a matter between him and the litigant or the litigant's attorney.

January 17, 1933

FEES FOR DELINQUENT TAX STATEMENTS; SEARCHES

Dear Sir:

I am in receipt of your letter of the 12th instant making inquiry if it is legal for the Clerk of the Circuit Court to charge twenty-five

CLERKS OF CIRCUIT COURT

cents for each delinquent tax statement covering the taxes for each taxable year.

In reply your attention is called to Section 4867, Compiled General Laws of 1927, providing for the Clerk to receive twenty-five cents for copying any record or paper, first one hundred words, and twelve and one-half cents for each additional one hundred words.

Your attention is also called to Section 1003, Compiled General Laws of 1927, as amended by Chapter 14572, Acts of 1929, providing for a fee to the clerk for searches of fifty cents for the oldest tax sale and fifteen cents for each subsequent tax sale.

January 16, 1933

DISPOSITION OF FEES AND DEPOSITS BY RETIRING CLERK

Dear Sir:

This refers to your favor of January 14.

It is my opinion that retiring clerks should turn over to the incoming clerks all unearned deposits in their hands. These deposits go with the office and should be turned over just as any other books or public property of the State. If there is any question as to the amount, then it will be a matter to call in a State Auditor to tell the amount that should be turned over by the retiring clerk to the incoming clerk.

As to the refusal of the incoming clerk to file pleadings where the party has already paid into the clerks office ample money to cover such filing fees, I doubt very much if the clerk can refuse to file such pleadings. Where the records of the office show that the attorney has ample credit for such pleadings as he wishes to file, I think he has a right to file them and have the fee charged against his credit; and if the retiring clerk refuses to make proper accounting, this matter should be placed into the hands of the State Attorney for such action as he deems wise.

August 18, 1933

CLERK CIRCUIT COURT NOT AUTHORIZED TO HANDLE BONDS
FOR PROFIT OR OTHERWISE AS AN INDEPENDENT
ENTERPRISE

Dear Sir:

Answering your communication of August 15, 1933, I beg to reply that the clerk of the circuit court has no legal right or authority to handle bonds as an independent enterprise of his office, even though the revenue therefrom, or the margin realized thereon, should be applied to the revenue of the office.

CLERKS OF CIRCUIT COURT

Whether such trafficking in bonds should take the form of speculation or not, the use of such a public office as a means of making profit of this nature would be contrary to public policy and unwarranted.

Even though the margin realized should be placed in the revenue of the office, the same might serve to increase in part your compensation as allowed by law; but even if it did not so serve, the law does not contemplate additional revenue from such outside activities.

February 1, 1933.

COSTS AND FEES—WHEN CLERK ENTITLED TO, AND WHEN
ENTITLED TO CARD INDEX SYSTEM

Dear Sir:

It is my opinion that all deeds and mortgages recorded by your predecessor in office should be left in the office to be delivered to the proper parties upon payment of recording fees. The collection of recording fees is a part of the duties of the clerk and until the collection is made, the duty he owes the State is not complete.

In other words, the statute contemplates that at the time the mortgage or deed is left for record, the fees be paid. If this had been done the duty would have been complete when the instruments were recorded and the clerk entitled to his fee therefor.

With reference to card index system used by your predecessor as to whether he is entitled thereto, depends upon whether the same was prepared for the office on material furnished by the county. If the county furnished the cards and filing cabinet therefor, the system belongs to the county.

On the other hand, if the individual paid for and furnished these things and made them up at his own expense and time, and for which he did not receive compensation from the county, they would be his individual property.

What was said on the first question applies to the third and last question, that is, as to whether the clerk is entitled to all costs in suits or cases that have not been disposed of, or are now pending. In no event, would he be entitled to costs for services which have not been rendered by him. And in this connection it would be well to keep in mind that the collection of the costs is a part of the service to be rendered to the State.

August 15, 1934.

DEPUTY CLERK ENTITLED TO WITNESS FEE

Dear Sir:

In reply to your letter of the 9th instant, I beg to say I do not know of any statute prohibiting the payment of a witness fee to a Deputy Clerk of the Circuit Court when subpoenaed as a witness in a case.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

249

June 8, 1934.

CLERK OF CIRCUIT COURT OR DEPUTY SHALL RESIDE WITHIN
TWO MILES OF THE LIMITS OF THE TOWN OR CITY
WHICH IS THE COUNTY SEAT

Dear Sir:

Replying to your letter of June 5th, permit me to say:

Section 4853, Compiled General Laws of Florida, reads as follows with reference to the place of residence of the Clerk of a Circuit Court or his deputy:

"He or a deputy shall reside at the county seat or within two miles thereof."

You ask to be advised whether the term "County Seat" means the Court House or the town where the Court House is located. In reply I will say a "County Seat" is the City, town or village in which the Court House is located.

December 12, 1933.

DISPOSITION OF FUNDS REALIZED ON BOND CLERK
CIRCUIT COURT

Dear Sir:

This is in response to your communication of December 8th, in which you ask my opinion on the following facts:

A Clerk of the Circuit Court was found by the State Auditor to be short in the sum of \$12,670.10. His bond was in the sum of \$2,000, which together with the Court costs has been paid in full by the surety. The recapitulation of the State Auditor of the shortage is as follows:

19— 1928 Ctfs. Nos. 232 to 241, 247 to 250, 367 to 369 and 374 to 376	\$ 19.00
1928 Omitted Tax on above Ctfs.	2,011.92
1929 Omitted Tax on above Ctfs.	1,875.08
19— 1931 Ctfs. Nos. 320 to 329, 342 to 348, 532, 533 and 545½ to 549	2,666.87
Ctf. No. 552 of 1931	20.63
Ctf. No. 243 of 1930 and omitted tax	365.74
Ctf. No. 246 of 1930 and omitted tax	424.48
18— 1926 Ctfs. Nos. 204, 206, 207, 213, 215, 216, 217, 221 to 224, 228 to 30, 34, to 37 and	
1927 Ctfs. Nos. 317, 319, 320, 334, 336, 337, 338, 340, 341, 342, 343, 349, 350, 351, 353, 354, 355 and omitted tax on these 1926 and 1927 Ctfs. (Redemption)	3,000.00
Ctfs. other than above, out of file and not reported to Comptroller	1,247.69

250 BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

Other Ctfs. out of file	224.19
Candidates' Filing Fees, 1932 primaries	814.50
Credit on above account report of March, 1932	19.00
Shortage	12,651.10
	<hr/>
	\$12,670.10 \$12,670.10

You ask my opinion as to the manner of disposing of the funds realized on the bond.

It is my opinion that you should first pay the expenses of collection, including the fee of the State Attorney, and then pay such items of commission due collecting officers as is required to be paid by the State, including expense items such as advertising, which are also required to be paid by the State; and the balance you should pro-rate between the various accounts of the State and County as represented by the above recapitulation.

February 6, 1933.

METHOD TO BE USED IN COMPUTING ALLOWANCE TO CLERKS
OF THE CIRCUIT COURT FOR SALARIES

Dear Sir:

This refers to your favor of the 3rd. instant, in which you request my opinion as to the computation and payment of compensation to county officials.

Section 2865 of the Compiled General Laws is the basis for the computation, and it is my opinion that the compensation of each county official is determined yearly. In other words, the compensation should be made for the first year on the basis set forth in Section 2865, and if there are sufficient fees under the rule laid down in this statute to give the official the full \$7,500.00, then he should be paid that amount, but if the fees are such an amount as that under the computation set forth in Section 2865 as that the yearly compensation to the officer would amount only to the sum of \$5,000.00, then he should be paid the \$5,000.00, and that terminates and concludes that year's compensation. Should the official in the second, third or fourth year have an over-plus or excess over and above his \$7,500.00, maximum allowance, it is my thought and opinion that he cannot use this excess to recoup any shortage in the maximum amount in prior years of his term of office.

I feel clear in my own mind that the Legislature meant for these settlements to be made annually and when made, the settlements were final and conclusive for the year—in other words, the yearly compensation is based on the yearly unit of the term of office.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

251

November 21, 1933.

FEEES FOR KEEPING RECORD OF PERSONS CONVICTED OF CRIMES

Dear Sir:

I have your letter requesting my opinion upon the following question:

What fees may be charged by a Clerk of the Circuit Court under Section 4867, for the services rendered under Section 8209, Compiled General Laws of Florida, 1927, in recording the names of all persons convicted of crimes in any of the Courts of the County having criminal jurisdiction, together with a statement of the crime for which conviction was had?

It is my opinion that for rendering the services above enumerated, the Clerk of the Circuit Court, under Section 4867, Compiled General Laws of Florida, 1927, is entitled to the following fees:

Entering other matters required in the record of the Court, for the first 100 words or less—25¢;

Each additional 100 words or less—12½¢.

The fees set out in the above mentioned paragraph only apply to Clerks in Counties having a population according to the last State or Federal census of less than 10,000. In all Counties of the State having a population according to the last State or Federal census of 10,000 or more, the fees of the Clerk for performing said services are fixed by Chapter 15984, Laws of Florida, Acts of 1933.

February 3, 1933.

**FILING AND RECORDING FEES—DUE AT TIME OF OR PRIOR TO
RENDITION OF SERVICES**

Dear Sir:

Under the law filing and recording fees should be paid at the time of or prior to the service rendered, and it is the duty of the officer to see that these fees are collected and accounted for as they represent compensation to the county for services rendered by it through its officer, and the officer has no right under the law to extend the county's credit to any one. If he fails in this duty, he would probably be liable on his bond therefor.

November 21, 1933.

**DISTRIBUTION OF FUNDS COLLECTED ON CLERK'S BOND SHALL
BE IN PROPORTION TO THE INTEREST, EXCEPT THE DEBT
DUE THE STATE SHALL BE FIRST SATISFIED**

Dear Sir:

I am in receipt of your letter of the 14th instant, advising that a former Clerk of the Circuit Court was short in his accounts, and a num-

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

ber of tax sale certificates were missing. You state that the shortage on account of tax sale certificates and omitted taxes totals something like \$10,000.00, and that the Clerk's bond was only \$2,000.00. You make inquiry as to the proper method of distributing the loss between the State, County, and tax collector.

In reply I beg to say that the amount received on account of the shortage should be distributed in proportion to the interests in such amount, except that under the provisions of Section 1348, Compiled General Laws of Florida, 1927, "the debt due to the State shall be first satisfied."

July 23, 1934.

DEPUTY CLERK CIRCUIT COURT IN TAKING OATHS AND EXECUTING PAPERS SHOULD SIGN THE CLERKS NAME, BY HIM
AS DEPUTY

Dear Sir:

On June 25th you wrote me making inquiry as to the question presented in the first three paragraphs of your letter, reading as follows:

"Some of the attorney's here has brought up the question of the authority of a deputy Clerk to take the affidavit of any paper by first signing the name of the Clerk and then by himself as Deputy."

"The attorneys think that in case of an affidavit that the acknowledgment should be taken by the Deputy signing his or her name alone and not place the name of the Clerk on such instrument.

"Also in issuing a tax-deed by a Deputy that such deed should be signed by the deputy executing the same, and the acknowledgment of such deputy taken without the name of the Clerk appearing thereon."

On the 13th instant I wrote you, requesting citations of authorities from the attorneys holding the views expressed in your letter.

I am now in receipt of your letter of the 19th instant, enclosing a communication under the same date, from Mr. ———, Attorney of Sarasota, addressed to you, with reference to the subject of deputies administering oaths.

Your attention is directed to Section 4851, Compiled General Laws of Florida 1927, reading as follows:

"Power of Clerk to appoint deputies—The said clerk may appoint a deputy or deputies, for whose acts he shall be liable, and the said deputies shall have and exercise the same powers as the clerks themselves."

Your attention is further directed to the 11th Headnote in the case of *Platt vs. Rowan*, 54 Fla. 237, 45 So. 32, reading as follows:

"Even prior to the adoption of the Revised Statutes of 1892,

CLERKS OF CIRCUIT COURT

a deputy clerk of the circuit court had the authority to take an acknowledgment of a deed in the name of the clerk of such court by himself as deputy."

While the above quoted statute authorizes deputy clerks to exercise the same powers as the clerks themselves, you will note that the clerks are by statute made liable for the acts of deputies. It is to be borne in mind also, that the primary authority of a deputy to act in the capacity of deputy clerk must come from the clerk himself, before he may exercise the statutory powers authorized.

Furthermore, the authority of a deputy clerk in executing a paper is authenticated by the seal of the clerk. There has long been a custom for deputy clerks in executing papers to first sign the name of the clerk, and then sign their own name as deputy clerk.

In consideration of the above observations and the ruling of our Supreme Court in the case of *Platt vs. Rowand* above quoted, it is my opinion that it is legal and proper for a deputy clerk in administering an oath or taking an acknowledgment, or signing a deed, to first sign the name of the Clerk of the Circuit Court, and then sign his own name as deputy clerk. I am not prepared to say that it would not be legal for a deputy clerk in performing such acts, to leave off the Clerk's name and sign only his own as deputy clerk, but I think the safer method would be for him always to first sign the Clerk's name and then sign his own as deputy.

SECTION 7

COUNTY JUDGES

July 26, 1934.

FEES OF—FOR MAKING REPORTS UNDER ESTATE TAX LAW

Dear Sir:

I am in receipt of your letter of July twenty-third, advising that several county judges of the State have made inquiry as to how much they may legally charge an estate for making the report as provided for under Section 23, Chapter 16015, Acts of 1933, which Section provides for county judges to make monthly reports to the Comptroller for all decedents and the probable value of the estates of such decedents; and in which it is further provided that the expenses for making such reports shall be charged as cost of administration against the estate of such decedents.

In reply, I beg to advise that in my opinion the charges for such services are determined by Section 5200, Compiled General Laws of Florida, 1927, relating to fees of the county judge as judge of probate, and also Section 3084, Revised General Statutes, quoted in Section 5237, Compiled General Laws of 1927.

The only necessary and proper charges for such reports appear to be the writing of such reports and entry on the probate docket. The charge for writing is fifteen (15¢) cents for the first one hundred (100) words and ten (10¢) cents for the next or fractional part of one hundred (100) words. The charge for entry on the probate docket is twenty (20¢) cents.

February 22, 1933.

ADVISABILITY OF SUIT ON BOND OF FOR GAME AND FISH FUNDS
LOST IN DEFUNCT BANK*Dear Sir:*

I am in receipt of a letter, under date of the 18th instant, from your Secretary, ———, enclosing correspondence with The Fidelity & Guaranty Company of Maryland, surety on the above bond, with reference to claim of \$871.00 against a county judge for hunting and fishing licenses.

Hon. Fred H. Davis, former Attorney General, under date of May 29, 1930, addressed a letter to the Assistant State Game Commissioner relative to the liability of County Judges for funds collected for hunting and fishing licenses which were deposited in a defunct bank. The last paragraph of said letter reads as follows:

"While I am convinced that the Judge is legally liable, I am

COUNTY JUDGES

equally convinced that it would be wrong for the State to enforce such legal liability against any officer who, in good faith, has deposited money in a State banking institution, which by law is made and authorized a depository for money and which is left open to do business by the State banking authorities. My conviction is that the State should take the same medicine its citizens have to take when the State's moneys are lost through a bank failure. In practically every case of this kind which has come up the Legislature has passed a Special Law relieving the officer from accountability for moneys lost in a defunct bank where the officer was able to show that he exercised proper diligence in making his deposit and was not guilty of negligence."

I am loath to interrupt or disregard a policy proclaimed by a former Attorney General. The records in the Comptroller's office show that _____ had on deposit with the closed bank \$1125.03. There would be considerable expense in bringing a suit _____ and if brought at this time might be defeated by a Relief Act during the next Legislature, which convenes in a very short time. In view of these facts, I seriously doubt the advisability of bringing suit and am returning the above mentioned file herewith.

July 5, 1933.

LAW FIXING COMPENSATION REPEALED

Dear Sir:

Replying to yours of June 21, permit me to say Chapter 11925, Laws of Florida, Acts of 1927, fixing the compensation of county judges in counties having population of not less than 12,700 and not more than 13,000 according to the State census of 1925, was repealed by Chapter 15963, Acts of 1933.

September 11, 1934.

FEES, WHEN ACCUSED DISCHARGED ON PRELIMINARY HEARING

Dear Sir:

Answering your letter of the 29th ultimo, which came during my absence, I beg to say that I do not know of any statute authorizing the withdrawal of an affidavit or warrant in a criminal case on preliminary hearing before a County Judge or Justice of the Peace, but the accused Section does not apply to crimes of a public nature.

As to fees for preliminary hearings, see Sections 8488 and 8490, Compiled General Laws of Florida, 1927.

Section 8488 relates to cases when persons are committed.

Under Section 8490 payment in advance or security for costs shall be required of party applying for a warrant unless the party applying

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY JUDGES

shall make an affidavit of insolvency and of substantial injury, to person or property, suffered by him. The Supreme Court has held that this Section does not apply to crimes of a public nature.

If advanced payment of costs, or security therefor, have not been required by the Judge or Justice of the Peace and the accused is discharged on preliminary hearing, I find no authority for the County to pay the Judge's fees in such cases.

If advanced payment of costs, or security therefor, cannot be required under the law or rulings of the Supreme Court, I still find no authority for payment of the Judge's fees when the accused is discharged on preliminary hearing.

It would, therefore, seem wise, when it can be done, to require payment in advance of costs or security therefor.

December 12, 1934

COUNTY JUDGES FEE FOR ISSUING WARRANTS

Dear Sir:

This acknowledges receipt of yours of December eleventh, wherein you ask the proper fee to be allowed a county judge for issuance of a warrant for a criminal case.

Such fee, of course, is the same as allowed the justices of the peace.

I affirm the former opinion of my predecessor, the Honorable Fred H. Davis, contained on page 618 of the Biennial Report for 1931-1932, to the effect that unless and until declared unconstitutional we must abide by Section 8325, Compiled General Laws of 1927, requiring the issuance of such warrants in duplicate.

By the case of *State ex rel Murphy vs. Harlee*, decided December 20, 1930, and reported in 131 So. 866, the Supreme Court held that Section 3384, R. G. S. 1920 (which now appears as paragraph 2 of Section 5237, C. G. L., 1927) refers to Section 3084, R. G. S. 1920.

By an examination of the said Section 3084, the same being the Statute fixing fees of a Clerk of the Circuit Court, as clerk and reporter, there is no mention made of issuing a warrant. Such omission is obvious because a clerk of the circuit court has no authority to issue a warrant. We must, therefore, rely upon fees allowed for writing and sealing papers not otherwise specifically mentioned.

It is, therefore, my opinion that a county judge, for the issuance of a warrant in a criminal case, is entitled to a fee of 20¢ for writing the first one hundred words and 10¢ for each additional one hundred words

COUNTY JUDGES

and fraction thereof, and 10¢ for affixing his seal thereto; and that for making the duplicate copy, he is entitled to like additional fees therefor. Thus, for example, for the issuance of a warrant containing one hundred fifty words, such county judge would be entitled to a fee of 30¢ for writing and 10¢ for affixing the seal to the original, and 30¢ for the copy and 10¢ for affixing the seal to the duplicate, or a total of 80¢.

December 18, 1934

COUNTY JUDGE IS LIABLE TO ACCOUNT FOR FEES PRESCRIBED
BY LAW EVEN THOUGH PARTY INCURRING COST
IS INSOLVENT

Dear Sir:

I am in receipt of your letter of the 15th instant enclosing statement to your firm in the sum of \$9.61 from the County Judge with reference to estate of a deceased citizen. You state that it was necessary for the widow of this party to qualify as administratrix before bringing a suit in the Federal Court and that said widow made an insolvent affidavit before the judge. You further state that you requested the Court to issue letters of administration, which the Court was reluctant to do, stating that the State Auditor would hold him personally responsible and that you informed the Judge that if the State held him responsible for this obligation you would personally reimburse him. You further state that no money was realized by the suit for the reason that the Judge instructed a verdict for the defendant and the plaintiff had no money to appeal.

The letter of the County Judge enclosed states that he had been advised by the State Auditor, based upon an opinion from this office, that all fees due for the filing of papers for which credit was allowed and no collection made would be charged against the officer.

I assume that my letter of October 21, 1933, to Hon. Bryan Willis, State Auditor, is the letter from this office referred to, and I am enclosing copy of said letter which you will note is based upon the decision of our Supreme Court which held in effect that fees prescribed by law represent charges made by the State for services rendered by its officers and are fees of the office and not the officer. You will note the Court decision cited in said letter.

I have gone over the recent Probate Act and have made a general search of the statutes in an effort to ascertain if the statutes provide for any relief in situations such as are recited in your letter. In Section 162, Compiled General Laws of Florida, 1927, I found that the Comptroller is authorized to credit Sheriffs and other ministerial officers of the Court against whom charges for the non-collection of fines and forfeitures have been or may be made upon the certificate of the Judge

COUNTY JUDGES

of the Circuit Court under the seal of the Court, and that the party or parties upon whom fines were imposed or against whom forfeitures were rendered were and are totally insolvent. After diligent search, as above mentioned, I have not been able to find a similar statute for the remission of costs to insolvent persons in administration proceedings in the Probate Court. There appears to be no relief under the statutes for your particular situation unless the Legislature should see fit to pass a special Relief Act or a general Act for the remission of Court costs in administration proceedings in the Probate Court in cases of insolvency.

SECTION 8

SHERIFFS

July 18, 1934

SHERIFFS FEES FOR FEEDING PRISONERS SHOULD BE PAID BY
COUNTY REGARDLESS OF WHETHER PRISONERS
ARE SOLVENT OR NOT

Dear Sir:

I am in receipt of your letter of July 14, enclosing a blank form for sheriffs to be used in making out their bills for feed of prisoners, and you call particular attention to the printed form of affidavit of the sheriff showing that the prisoners fed and charged are insolvent. You state that if the law provides that the sheriff must collect from the prisoners themselves for their food if they are able to pay, the Board might desire to require that the same be done; and you make inquiry as to the duty of the sheriff with reference to the collection of feed bills from solvent prisoners when they are convicted.

Your attention is called to Section 6 of Article VIII of the State Constitution, providing for the election of sheriffs and other county officers, in which is found the following language:

"Their powers, duties and compensation shall be prescribed by law."

Your attention is further called to Section 2838, Compiled General Laws of Florida, 1927, which provides for fees of sheriffs for feeding prisoners. You will note that said statutes makes no distinction between solvent and insolvent prisoners.

Your attention is further called to Section 2827, Compiled General Laws of Florida, 1927, which provides that all fines imposed under the penal laws of the State shall be paid into the fine and forfeiture fund of the County.

In my opinion the sheriff is entitled to his fees for feeding of prisoners, regardless of whether they are solvent or insolvent, and that he is not required to collect such fees direct from solvent prisoners.

July 18, 1934

THE LAW GOVERNING FEES FOR FEEDING PRISONERS CONTEM-
PLATES THAT A FRACTION OF A DAY SHALL BE PAID
FOR AS A FULL DAY

Dear Sir:

I am in receipt of your letter of July fourteenth, relative to the compensation of Sheriffs for feeding prisoners. You make inquiry as

SHERIFFS

to what constitutes a day under the law pertaining to the feeding of prisoners.

Section 2838, Compiled General Laws of Florida, 1927, is the statute providing for fees to be paid sheriffs for feeding prisoners.

In answer to your inquiry as to what constitutes a day, I refer you to the recent decision of our State Supreme Court in the case of Smith vs. The State ex rel Thomas, _____ Fla. _____, 154 So. 184. I quote you extracts from the body of said opinion as follows:

"In this case the only question presented is one of law, viz.: Is a Sheriff under the provisions of a statute (Comp. Gen. Laws 1927, Section 2538) fixing the sheriff's compensation for feeding prisoners at 'sixty-five (65) cents per day each' entitled to charge and collect the sum of 65 cents for each day and compute a substantial fraction of a day as a day for such purpose?"

"The weight of authority supports the view that where a prisoner is kept in jail and fed for a substantial portion of a day the sheriff is entitled to pay for the full day."

"We think that if the Legislature had intended that fractions of days should not be computed as full days, that it would have so indicated in the statute enacted."

"The statute does not designate the number of meals to be served or the hours at which they are to be served, nor does it designate what should be served as a meal. All these things are left to the reasonable discretion of the sheriff."

"Of course, a sheriff would not be entitled to fees for feeding a prisoner which he did not feed at all."

August 31, 1934

SHERIFFS FEES TRANSPORTING PERSONS TO INDUSTRIAL
SCHOOL TO BE ACTUAL EXPENSE AND MUST
BE PAID BY COUNTY

Dear Sir:

I have your letter of the 30th inst., making inquiry as to the proper charges to be made by a sheriff for committing a person to the Florida Industrial School for Boys.

In reply I beg to say that there is no State appropriation for payment of transportation of persons to such school as provided for in Section 4588, Compiled General Laws of Florida, 1927, and it is necessary that costs in such cases be charged to and paid by the County under Section 8649 of the same compilation, which only provides for actual expenses.

SHERIFFS

July 20, 1934

SHERIFF COSTS EXTRADITION CASES—CONSTRUCTIVE RAIL
ROAD FARE NOT ALLOWABLE*Dear Sir:*

I am in receipt of your letter of the 16th inst., which you state was sent at the request of the sheriff of your county, in which you enclose copies of bills submitted by the sheriff in connection with the return from Wilkes-Barre, Pennsylvania certain parties. You state that the return of the above parties was made by the sheriff's deputy in company with a guard by private automobile, in which they travelled to Wilkes-Barre where delivery of the prisoners was made and, after having received them, the deputy, guard and all three prisoners returned in the same automobile. You state that you dis-allowed all charges for railroad fare because you considered them constructive.

In reply I beg to say that under the provisions of Section 4591, Compiled General Laws of Florida, 1927, and under the circumstances outlined by you as to the return of such prisoners by automobile, the items of railroad and pullman fares were properly dis-allowed.

October 26, 1934

APPROVAL OF BOND BY SHERIFF

Dear Sir:

Answering your inquiry of the 19th inst., I beg to say under the provisions of Sections 8347 and 8435, Compiled General Laws of Florida, 1927, the Sheriff is authorized to approve bonds in cases where warrant is sworn out from the Justice of the Peace Court and the prisoner is held in the County Jail under such warrant. The amount of bond should be fixed by the Judge or Justice.

April 24, 1934.

ENTITLED TO COMMISSIONS UPON SALE OF PROPERTY
UNDER PROCESS*Dear Sir:*

I am in receipt of your letter of the 20th inst., calling attention to the provisions of Section 4588, Compiled General Laws of Florida, 1927, prescribing the commissions of sheriffs for actual sale of property under process.

In reply to your inquiry, I beg to say that in my opinion the sheriff is entitled to the prescribed commissions upon actual sale of property under process when the property is bought in by the creditor as well as when bought in by any other party.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SHERIFFS

December 22, 1933.

FEES FOR RELEASE OF PRISONER AND RECOMMITMENT
UNDER ORDER

Dear Sir:

I have your letter of December 20th, in which you request my interpretation of that part of Section 4588, Compiled General Laws of Florida, 1927, which reads as follows:

"Re-commitment under order 50¢"
(Immediately preceding this line in the statute is, "Commitment
to jail of prisoner arrested by him\$1.00).
"Release of prisoner 50¢."

You state that the Sheriff of your County takes the position that the words "Release of prisoner" would permit the Sheriff to charge a fee of 50¢ for each of the following items:

Presenting the prisoner to the Court for arraignment;
Presenting the prisoner to the Court for plea; and
Presenting the prisoner to the Court for trial.

You state that the Sheriff in your County takes the position that the words "Re-committment under order" permits a charge of 50¢ for each of the following items:

Return of prisoner to jail after arraignment;
Return of prisoner to jail after plea;
Return of prisoner to jail after preliminary hearing;
Return of prisoner to jail after trial.

The Sheriff receives a fee of \$1.00 for committing to jail prisoners arrested by him. So long as he holds the prisoner under a particular process he cannot charge any fee for recommitment or for release. For example, if the Sheriff holds a prisoner under a warrant issued by a Justice of the Peace or a County Judge, he cannot charge a fee for releasing the prisoner until some order has been issued by a Court of competent jurisdiction authorizing the release of the prisoner from the process under which the prisoner is held by the Sheriff.

In the event of a preliminary hearing, the Sheriff could not charge a fee for the release of the prisoner for the preliminary hearing because he would not actually release the prisoner for the hearing since there was no order of the Court authorizing the release. If at the conclusion of the hearing, the Court orders the prisoner discharged, then the Sheriff will be entitled to a fee for the release of the prisoner. If at the conclusion of the hearing, the Court decides to bind the prisoner over and he cannot furnish bail, then the Court shall make out a commitment to the Sheriff or Constable requiring that the accused be taken to the jail and there detained until discharged by due course of law. From the time this order is placed in the hands of the Sheriff, he will hold the prisoner under the order and he will be entitled to a

SHERIFFS

fee of 50¢ for recommitting the prisoner to the jail under this order. If the prisoner is later indicted by the Grand Jury or information is filed, then a *capias* will be issued and a Sheriff will be entitled to his fee for serving the *capias* and for committing the prisoner to jail under the *capias*. During the trial of the prisoner, the Sheriff may be required to produce the prisoner in Court and to return him to the jail several times. The Sheriff will not be entitled to any fees for release or recommitment of the prisoner during the trial. If the defendant is found not guilty, the Court will order his release and the Sheriff will be entitled to a fee of 50¢ for the release of the prisoner. If the defendant is convicted of a felony, the Clerk will issue a commitment authorizing the Sheriff to deliver the defendant to the State prison officials. In this case the Sheriff will be entitled to 50c for re-committing the prisoner to jail under this order and he will also be entitled to a fee of 50¢ for the release of the prisoner to the State prison officials. If the defendant is convicted of a misdemeanor and is sentenced to serve time, the Clerk will issue a commitment authorizing the Sheriff to carry out the judgment and sentence of the Court and the Sheriff will be entitled to a fee of 50¢ for re-committing the prisoner under this order. After the prisoner has served the required length of time, the Sheriff will be entitled to charge a release fee of 50¢.

If a person is tried by a Justice of Peace and is found not guilty, the Court will order him released and the Sheriff or the Constable will be entitled to a release fee of 50¢. If he is convicted and sentenced to serve time, the Justice of Peace will issue an execution of judgment and sentence directed to the Sheriff or Constable and the officer serving the same will be entitled to a fee of 50¢ for recommitting the prisoner thereunder. When the prisoner has completed his sentence, the Sheriff will be entitled to a fee of 50¢ for releasing him.

See Sections 8333, 8339, 8425, 8435, 8443, Compiled General Laws of Florida, 1927.

I trust that I have fully answered the questions asked in your letter. If you have any other question on this subject, please write to me.

December 13, 1933.

ENTITLED TO ONE MILEAGE CHARGE IN SERVING MORE THAN
ONE PROCESS AT SAME TIME AND PLACE

Dear Sir:

I have your letter of December 12th, in which you request my opinion upon the following question:

If a sheriff is required to serve two papers upon two defendants in the same suit and the service is made upon each defendant at the same time and place, is he entitled to charge mileage for each paper served?

The statute (Section 4588, Compiled General Laws of Florida, 1927),

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SHERIFFS

which permits the sheriff to charge mileage for the execution of process or for the service of any other paper which may be required of him, is based upon the theory that mileage will only be charged when the Sheriff actually travels the miles charged for in serving the process or other paper. This conclusion is borne out by Section 4592, Compiled General Laws of Florida, 1927, which says:

"No Sheriff, constable, or coroner shall charge constructive mileage. The mileage charged for must be actually travelled by the nearest and most direct route by the public highway."

In the case stated by your question, the sheriff only made one trip although he served four papers while on the trip. It is my opinion that under the circumstances he is only entitled to charge mileage for one trip.

November 2, 1933

STATE JURISDICTION OF WATERS OF GULF OF MEXICO EXTEND
THREE LEAGUES FROM SHORE

Dear Sir:

This is in response to your oral inquiry of this date, requesting my opinion as to whether or not the sheriff of Taylor County has jurisdiction over any waters adjacent to Taylor County in the Gulf of Mexico, and if so, to what extent his jurisdiction extends.

The Constitution of Florida, Article I, defines the boundaries of the State and fixes the line at three leagues from the land, insofar as the particular territory involved in your question is concerned. (A league, or marine league, is 3.45 miles).

In the case of *Lipscomb vs Gialourakis*, 133 So 104, the Supreme Court of Florida definitely held that the jurisdiction of the State, and in turn of its county officers as to Taylor County, extends over that portion of the Gulf of Mexico lying between "the shore of the Gulf and the State Line three leagues distant from the shore and between lines drawn at right angles from the shore line from the mouth of the Aucilla River to the State boundary line and the line drawn at right angles from the shore line from where the western boundary line of Lafayette County touches the waters of the Gulf to the State boundary line."

This case seems to definitely answer your inquiry, and defines the jurisdiction of the sheriff of Taylor County in serving process, making arrests, and otherwise carrying out his official duties.

SHERIFFS

January 14, 1933

SHERIFF APPOINTMENT TO FILL VACANCY, CALHOUN COUNTY

Dear Sir:

I am in receipt of your letter of the 11 instant, advising that Mr. _____ was appointed Sheriff of Calhoun County on December 16th, 1932, succeeding _____ who was elected to that office at the general election in November prior to his death. You make inquiry if the office is now vacant and subject to be filled by appointment.

In reply I beg to refer you to Section 7 of Article IV of the State Constitution, which provides for the Governor to make appointments to fill vacancies by granting a commission for the unexpired term.

Section 14 of Article XVI provides that "all State, county and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

Section 6 of Article XVIII of the State Constitution provides that "the term of office for all appointees to fill vacancies in any of the elective offices under this Constitution shall extend only to the election and qualification of a successor at the ensuing general election."

Under the provisions of Section 15, Article V, of the State Constitution, the term of office of a sheriff is four years. And under the provisions of Section 14, Article XVIII, the terms of office of county officers, unless otherwise provided, commences on the first Tuesday after the first Monday in January next, after their election. It is clear that a term of the office of sheriff ended on January 3, 1933, and that a new term began on that date.

In the case of *State ex rel Hodges vs Amos*, 133 So 623, the Supreme Court of the State of Florida held that the provisions of Section 14 Article XVI, above mentioned, that an officer shall continue in office after the expiration of his official term until a successor is qualified, is intended to prevent a hiatus, and does not affect the cycle of the term fixed by law, which ends at the expiration of the statutory term periodically, whether the incumbent or another is the successor. And it is also held that "vacancy" means that the office is without such an occupant as precludes the filling of it in any mode which the Constitution may provide or may recognize as lawful.

In the third headnote in this case it is held that the provisions of Section 14, Article XVI, that all state, county and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified, contemplates that while such an officer shall continue in office or perform the official duties of the office after the expiration of his official term and until his successor is duly qualified, still the office is vacant as to the new term, in the sense that any office is vacant which is not occupied by a person chosen to fill it for such term.

Under the terms of the Constitution and under the ruling of the

SHERIFFS

Supreme Court in the above mentioned case, I beg to say that in my opinion there is a vacancy in the office of the Sheriff of Calhoun County, subject to be filled by appointment.

July 21, 1934

SHERIFF AND CONSTABLES COMMITMENT FEES

Dear Sir:

I am in receipt of your letter of the 18th inst., making inquiry as to whether the Sheriff or the Constable is entitled to commitment and release fees when prisoners are brought to the jail for receipt therein by Constables, and where Constables, pursuant to court orders or decrees, appear at the jail to secure the release of prisoners therefrom.

Your attention is called to Section 7523, Compiled General Laws of Florida, 1927, reading as follows:

"Any jailer or other officer, who wilfully refuses to receive into the jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars."

I have quoted the above statute to show that the receipt of a prisoner into a jail is not, under the law, considered a commitment. Neither would the mere opening of a door and allowing a prisoner to walk out be considered a release for which a release charge could be made.

In my opinion when a Constable brings a prisoner to the jail for receipt and safekeeping, and when under order of the Court, a Constable returns to the jail to secure the release of a prisoner, the Constable and not the Sheriff would be entitled to the commitment fee or the release fee as the case may be.

January 16, 1934

DEPUTY SHERIFF AUTHORIZED TO ACCEPT BOND

Dear Sir:

This refers to your favor of January 13th in which you ask to be advised whether or not a Deputy Sheriff has the authority to take a cash bond, and in reply permit me to say Section 8334 of the Compiled General Laws of 1927 reads as follows:

"All committing Magistrates, Sheriffs, Judges and all officers having authority to accept appearance bonds are hereby authorized to accept cash bonds in all criminal cases. All moneys

SHERIFFS

received as cash bonds under the provisions of this Section shall be by said officers deposited in some bank to the credit of such officers as trustee for the State and defendant. If the bond shall be estreated the money shall be immediately paid into the County Treasury according to the condition of said bond or returned to the defendant if he shall comply with the condition of such bond."

Where a cash bond is accepted by an arresting officer he should give the defendant a receipt therefor. The receipt should definitely state the location of the court to which the defendant is required to appear and the date upon which he is required to appear and the same should be signed by the arresting officer.

March 2, 1933

PRISONERS—RATE ALLOWED SHERIFF FOR FEEDING

Dear Sir:

Replying to your letter of February 28th, in which you request my interpretation of Section 2838 of the Compiled General Laws of Florida 1927, permit me to say I construe the Section to mean that the sheriff is authorized to bill the county commissioners for feeding prisoners at the rate of 65¢ per day for each prisoner where the number of prisoners is twenty or less. But where the number is more than twenty, he should render a bill at the rate of 50¢ per day each.

I think the Legislature took the position that it would cost less to feed each prisoner when the number exceeded twenty, than it would if the number were twenty or less.

SECTION 9

JUSTICES OF THE PEACE

July 18th, 1934

JUSTICE OF PEACE MAY ALSO BE MEMBER OF COUNTY
SCHOOL BOARD*Dear Sir:*

Replying to your favor of July 11th, I beg to advise that Section 15 of Article XVI of the Constitution of the State of Florida contains the following proviso:

"Provided, Notaries Public, Militia officers, County school officers and Commissioners of Deeds may be elected or appointed to fill any legislative, executive or judicial office."

You ask to be advised whether or not you may be a member of the County Board of Public Instruction, and at the same time be a Justice of the Peace.

A Justice of the Peace is a judicial officer, therefore, it appears that under the Section and Article above mentioned, you may legally hold both offices at the same time.

February 1, 1933

JUSTICE OF PEACE, WHEN DISQUALIFIED, CASE SHOULD BE
TRANSFERRED TO ANOTHER JUSTICE OR TO COUNTY JUDGE*Dear Sir:*

Replying to your letter of January 26th, permit me to say Section 8292, Compiled General Laws, reads as follows:

"In case a justice of the peace be disqualified or unable for any other cause to try any criminal case, the same may be tried before any other justice of the peace of the county or before the county judge."

Inasmuch as the statute does not provide for the transfer of a justice of the peace from one district to another, and inasmuch as the statute does not require the county judge to leave his office and go into a justice of the peace district to try a criminal case, where the justice of the peace is disqualified or unable from any other cause to act, it is my opinion that a court of competent jurisdiction would probably hold, if the question should be presented, that the statute authorizes the transfer of the accused from the district in which the justice may be disqualified or unable to serve, to the court of a justice in another district in the county or to the court of the county judge, and that the statute

BIENNIAL REPORT OF THE ATTORNEY GENERAL 269
JUSTICES OF THE PEACE

does not contemplate the transfer of a justice of the peace from one district to another. The Supreme Court has never passed upon this statute.

August 21, 1934

JUSTICE OF PEACE, DUTY AS CORONER

Dear Sir:

Replying to your favor of August 17th, I would state that it appears from the provisions of Section 8519 of the Compiled General Laws, that a Justice of the Peace within his district is the Coroner. If the Justice of the district in which the death occurs shall be for any reason unable to hold an inquest, it shall be held by the County Judge or by a Justice of one of the adjoining districts of the county.

Where death is supposed to have occurred by violence or criminal negligence, it seems to be the custom for the Sheriff or some peace officer to view the body and notify the Coroner. However, there does not appear to be a statutory provision prohibiting the removal of such body. It is my opinion that the best practice, as a practical proposition, would be for the Sheriff or Constable to communicate with the Coroner of the district or with the County Judge, and procure consent for the removal of the dead body, if it is deemed advisable by the Sheriff or Constable to have it removed before the inquest.

November 16, 1934

JUSTICE OF THE PEACE AUTHORIZED TO DESIGNATE OFFICER
FOR ATTENDANCE ON COURT

Dear Sir:

Replying to your favor of November 13th, I beg to advise that where a Justice of the Peace deems it necessary to have an officer in attendance on court, it is my opinion that he may, and probably should designate the Constable of the District to be the officer in attendance on the Court, however, if the Constable is not available, it is my opinion that the Justice could designate the Sheriff or one of the Deputies to be the officer in attendance on the Court.

January 11, 1933

NO JURISDICTION OFFENSES AGAINST LIQUOR LAWS; AUTHORIZED TO APPOINT CONSTABLE ONLY UNDER
CERTAIN CONDITIONS

Dear Sir:

Replying to yours of the 9th instant, permit me to say county judges have exclusive jurisdiction of all first offenses against the liquor

BIENNIAL REPORT OF THE ATTORNEY GENERAL
JUSTICES OF THE PEACE

laws of this State. The circuit courts have jurisdiction of second offenders in some instances, but a justice of the peace has no jurisdiction to try offenders against the intoxicating liquor laws.

A justice of the peace has no authority to appoint a constable except in cases where neither the sheriff nor one of his deputies, nor the constable of the district, is available. Where the services of the constable of the district or the sheriff or one of his deputies cannot be procured, then the justice is authorized to appoint a constable to serve process in civil cases only.

July 5, 1933

"BEATING WAY ON TRAIN" UNDER JURISDICTION OF JUSTICE OF
THE PEACE

Dear Sir:

Replying to yours of July 4, permit me to say Section 7765, Compiled General Laws of 1927, makes it a misdemeanor for a person to "beat his way on train;" therefore, the justice of the peace in your county has jurisdiction to try a person charged for such a crime.

June 12, 1933

DUTIES JUSTICE OF THE PEACE, COUNTY JUDGE AND
CONSTABLES IN CONNECTION WITH
CORONER'S INQUEST

Dear Sir:

Replying to your letter of June 7th, relative to the respective duties of the justice of the peace, county judge, and constable, in connection with the "coroner's inquest," permit me to say Section 8521, Compiled General Laws 1927, requires that the coroner, upon being notified of the finding of a dead body, within his district, shall make his warrant directed to the constable of the district, if there be one, and if not, then to any constable of the county, or to the sheriff.

Under this statute it is the duty of the justice of the peace acting as coroner, to issue his warrant to the constable of his district if there be one, and only in the event that there is no such constable or that such constable is not available, should the warrant be issued to any other constable or to the sheriff.

This rule is subject to this exception: Where a homicide has been committed and the offender has been arrested by the sheriff having jurisdiction of the accused, I think the sheriff should be the person to handle the whole proceeding, including the coroner's inquest.

You will observe that Section 8519, Compiled General Laws, provides that "justices of the peace within their respective districts shall hold in-

JUSTICES OF THE PEACE

quest of the dead and to that extent shall be deemed coroners," and that the statute further provides that "in case the justice of the district in which the death occurs shall be for any reason unable to hold an inquest, it shall be held by the county judge or by a justice of one of the adjoining districts of the county."

In view of these provisions it is my opinion that if a death occurs by violence or criminal negligence in a particular justice of the peace district, the justice of that district when notified is required to consider the circumstances attending the cause of death, and if after considering the circumstances he has good reason to believe that the death was caused by the criminal act or negligence of another, he shall summon a jury and include the ground for his opinion that the inquest is necessary in the order for the jury.

It is my opinion that only in cases where a justice of the peace of the district in which the dead body is found is unable to hold an inquest is the county judge authorized to do so.

SECTION 10

CONSTABLES

February 10, 1934

CONSTABLES PER DIEM, WHEN ALLOWED FOR ATTENDANCE ON
COURT—COUNTY TO PAY SAME*Dear Sir:*

Replying to your letter of February 8th to which was attached letter from Mr. ——— and statement of the fine and costs in the case of State of Florida vs W. O. Sluster, permit me to say:

Assuming that the service was actually rendered all the items on the cost bill submitted are valid except the item of \$4.00 for the Constable's attendance on Court.

A Constable is not entitled to \$4.00 for attendance on Court in each case; he is entitled to a per diem for attendance on Court when he acts as Executive Officer of the Court and his attendance is necessary.

Where a Sheriff or Constable, acting as Executive Officer of a Court, is in attendance on the Court from the time the Court convenes until it adjourns for the day, I think such officer is entitled to the per diem prescribed by statute, otherwise I do not think he is entitled to the per diem, and the per diem fee for the officer's attendance on Court should not be charged to each case. It should be charged to the County.

November 10, 1934

CONSTABLES CHARGE FOR CONSTRUCTIVE MILEAGE
NOT AUTHORIZED*Dear Sir:*

This acknowledges receipt of your favor of November 9th, with letter attached addressed to the Governor and signed by Mr. ———. It appears that this person thinks that a constable has overcharged him for mileage in connection with some case to which he was a party. Section 4592 of the Compiled General Laws reads as follows, to-wit:

"No Sheriff, Constable or Coroner shall charge constructive mileage. The mileage charged for must be actually travelled by the nearest and most direct route by the public highway."

If the Constable in this case did not actually travel the distance for which he charged, then of course, the charge for mileage, or at least a part of it, is not warranted by law. I am returning herewith the letter from Mr. ——— which you enclosed with your letter to this office.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CONSTABLES

273

December 17, 1934.

FEES OF CONSTABLE EXECUTING CRIMINAL WARRANT

Dear Sir:

I am in receipt of your letter of the 5th instant with reference to fees of Constable for executing a criminal warrant.

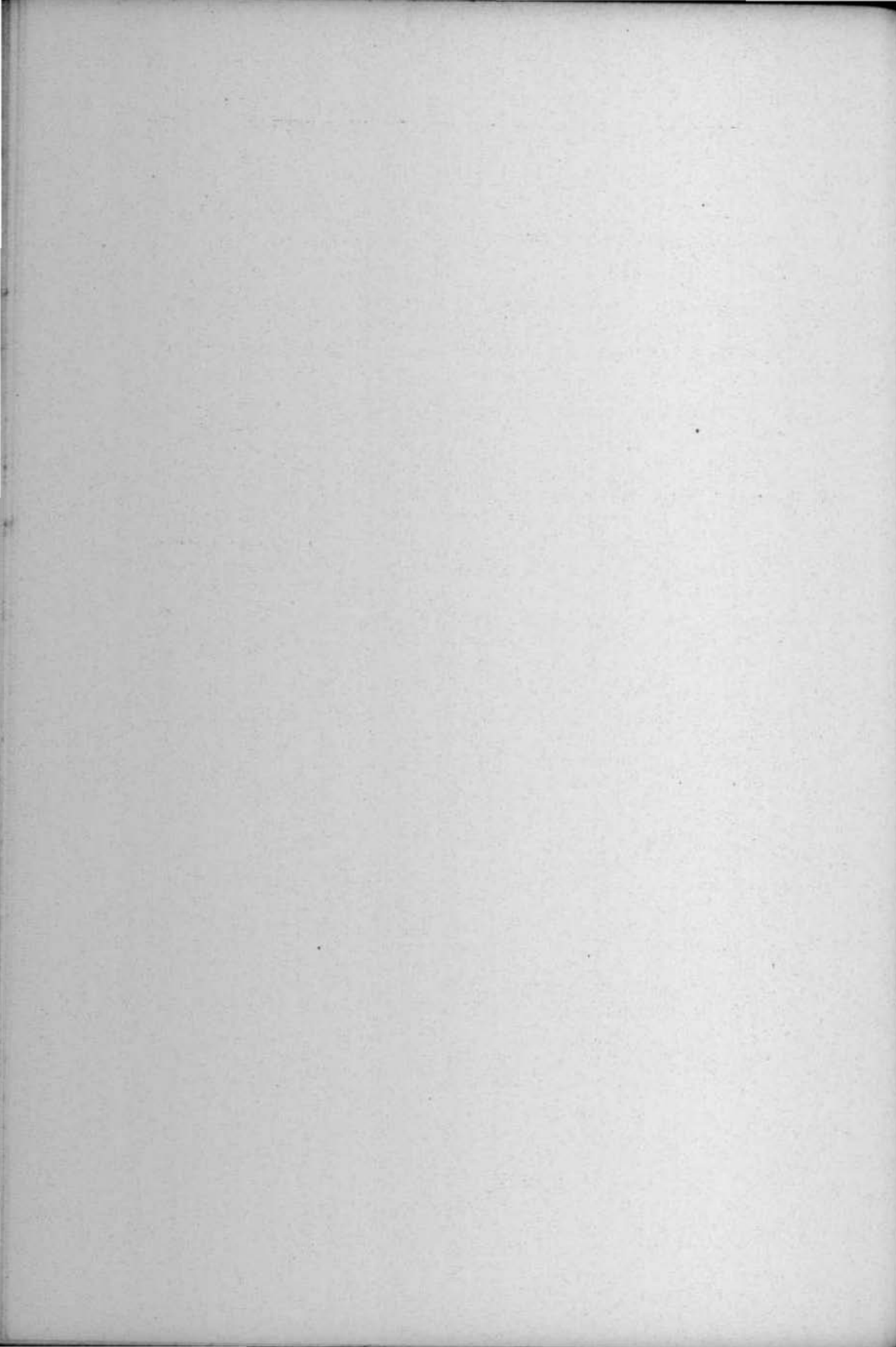
In reply your attention is called to Section 8488, Compiled General Laws of Florida, 1927, reading as follows:

"Whenever a committing magistrate holds to bail or commits any person to answer to a criminal charge in a county court, a Criminal court of record, or a circuit court, and any information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant."

You will note that under the terms of the exception to said statute you are entitled to your costs for executing criminal warrant whether any information or indictment is found against the person arrested.

For your further information along this line I quote you the last paragraph of the body of the opinion of our Supreme Court in the case of Osceola County vs. State ex rel. Newton, 115 Fla. 5, 155 So. 119, as follows:

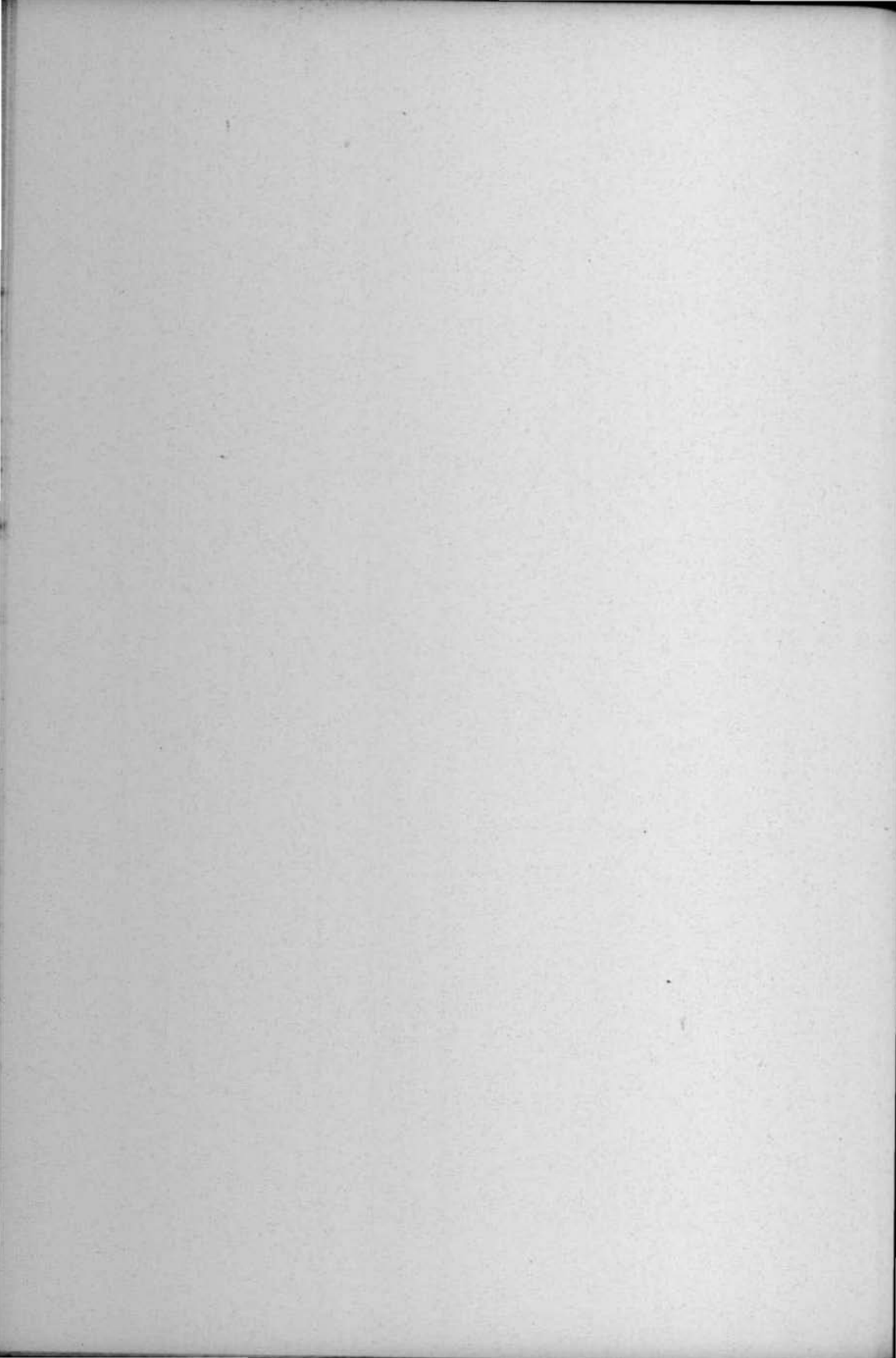
"Furthermore, under the express terms of Section 8488, C. G. L., Section 6174, R. G. S., the costs for executing a warrant incident to a commitment trial before a magistrate are payable by the county, even in cases where no information is filed nor indictment found. It was the purpose of this stated exception found in Section 8488, C. G. L., supra, to protect an arresting officer in his right to the collection of his costs for executing a warrant issued by a committing magistrate without regard to the nature or cause of the accusation, or the foundation in law or fact for the charge made. This is so, since under the statutes it is made the duty of sheriffs, and constables to serve all warrants coming into their hands which are fair and valid on their face, in default or neglect of which they are subject to certain penalties. See Section 7522, C. G. L., Section 5383, R. G. S., Section 4594, C. G. L., Section 2896, R. G. S."



CHAPTER IV

BANKS AND BANKING

	Page
Section 1. National Banks	277
Section 2. Depository of Public Funds	285
Section 3. Liquidators	288
Section 4. Stock Assessments	299
Section 5. Power to Pledge Assets	301
Section 6. Miscellaneous	304



CHAPTER IV

BANKS AND BANKING

SECTION 1

NATIONAL BANKS

February 28, 1934.

VALIDITY OF PLEDGE OF SECURITIES; AND LIABILITY OF RECEIVER FOR INTEREST ACCRUING SUBSEQUENT TO RECEIVERSHIP

Dear Sir:

This is in response to your *inquiry* of the 27th, in which you ask for my opinion relative to the following questions:

(1) Does a national banking association doing business in Florida have legal power to pledge a part of its assets to secure a deposit by the State Treasurer of funds received by him from the liquidator of an insolvent State bank under the provisions of Section 1 of Chapter 6807, Acts of 1915, as amended by Section 19 of Chapter 13576, Acts of 1929, now appearing as Section 6102, Compiled General Laws of 1927, 1932 Supplement?

(2) Is the State Treasurer entitled to collect interest accruing on the deposit of public funds made in a national banking association from the date of the appointment of a receiver therefor, until the date of the payment of the amount represented by such deposit?

In answer to Question No. 1, I call your attention to Section 6079, Compiled General Laws of 1927, which provides that State banks which shall be designated by the Comptroller shall be depositories of public money, and they are authorized to pledge security for the prompt payment of such public moneys. Also, under Section 173, Compiled General Laws of 1927, the Governor, Comptroller and State Treasurer are authorized to deposit, subject to call, the moneys of the State in such banks in the State as will offer the best inducements as to interest and security; and Section 178, Compiled General Laws of 1927, which provides:

"It shall be unlawful for the State Treasurer to deposit or keep any money not deposited in accordance with Section 173 in any bank, without the consent of the Governor and Comptroller."

While Section 2404, Compiled General Laws of 1927, has to do primarily with county depositories, the same likewise authorizes State banks, and purports to authorize national banks, to pledge securities for the protection of such funds; it is cited to show the general legislative policy with reference to the protection and safeguarding of public moneys.

NATIONAL BANKS

The authority of the State banks organized under the laws of Florida to pledge part of their assets, was definitely upheld in *First American Bank & Trust Company vs. Town of Palm Beach*, 117 So. 900, wherein the Supreme Court of Florida said that such authority is controlled in many States by statute, and in others by court decisions, but that in Florida the question of such authority is controlled by a legislatively established public policy; but that even in the absence of such policy a bank may receive special, specific and general deposits, and give security for them.

The Court held that the pledge to secure the funds of a municipal corporation as well as the Lake Worth Inlet District, was within the power of such bank.

This question arises primarily because of the recent opinions of the Supreme Court of the United States rendered February 5, 1934, in the cases of the *Texas and Pacific Railway Company vs. S. C. Pottorff*, and *City of Marion, Illinois vs. Sneed*.

The first of these cases held that a national banking association has no power to pledge a part of its assets to secure a private deposit. The second held that by the amendment of Section 45 of the National Bank Act of 1864, 13 Stat. 101, R. S. 5336, 12 U. S. C. A., Title 7, Section 24, by the Act of June 25, 1930, Chapter 604, 46 Stat. 809, which reads as follows:

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located, in the case of other banking institutions in the State."

Congress has evidenced an intention to confer power to pledge assets of national banking associations as security for deposits of public moneys of the State or any political subdivision thereof, to the extent that the same might be authorized by State law with reference to other banking institutions.

It is my opinion that the funds involved in your question are "public moneys," which the Treasurer of the State of Florida, acting as such Treasurer, holds as trustee for the parties in interest in the bank liquidation proceedings pursuant to which they have been paid into his hands; and that a national banking association has the power to pledge a part of its assets to secure the repayment thereof.

(2) In answer to your second question, I am of the opinion that under the contract pursuant to which the securities were pledged and the deposit made, which provides for interest at a certain rate to be paid quarterly, and that the rate of interest shall be paid "upon daily balances carried by the State Treasurer * * * until final payment and settlement of such accounts, * * *," imposes a liability to pay interest until final payment and settlement of such accounts, even though such

NATIONAL BANKS

interest accrues between the time of the receivership proceedings and sometime thereafter.

This is in line with the ruling of the Comptroller of the Currency of the United States contained in previous matters which you have had before him. I am of the opinion also that such contract or agreement in regard to interest is within the power necessarily implied from the power to pledge a part of the national banking association assets to secure public funds.

March 1, 1934.

AUTHORITY OF NATIONAL BANKS TO PLEDGE ASSETS TO
SECURE DEPOSITS OF STATE FUNDS

Dear Sir:

This is in reply to your letter of February 28th.

Section 45 of the National Bank Act of 1864, was amended by Act of Congress of June 25, 1930, c. 604, 46 Stat. 809, by adding thereto the following:

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located, in the case of other banking institutions in the State."

It has been held by the Supreme Court of the United States that a national bank has power to pledge its assets to secure deposits of public funds only to the extent and in a manner specifically authorized by Congress.

Section 173 of the Compiled General Laws of Florida 1927, authorizes the Governor, Comptroller, and State Treasurer to deposit the moneys of the State in such banks in the State as will offer the best inducement as to interest and security.

Section 174 provides:

"The security to be given by such banks as may be designated under the preceding Section shall consist of bonds of the United States and the bonds of the several States, county and municipal bonds, and county or county school time warrants, issued by any one of the counties or cities of the State of Florida of the value thereof as may be agreed to by the Governor, Comptroller and Treasurer."

Section 6079 of the Compiled General Laws, which was originally enacted as a part of an Act relating to the organization and regulation of State banks, authorizes such banks to be designated by the Comp-

NATIONAL BANKS

troller as depositories of public money, under such regulations as the Comptroller may prescribe, and it is provided:

"The Comptroller shall require banking companies thus designated to give satisfactory security by the deposit of bonds of the United States or of the State of Florida, or other satisfactory security for the safekeeping and prompt payment of the public moneys deposited with them, and for the faithful performance of their duties as financial agents of the State."

Under the provisions of the Act of Congress of June 25, 1930, as above quoted, National banks are authorized to pledge their assets to secure deposits of State funds by pledging bonds of the United States or bonds of the several States, or county or municipal bonds, or county or county school time warrants issued by any county or city of the State of Florida, as authorized by Section 174 of the Compiled General Laws, or such other security as shall be satisfactory to the Comptroller, as authorized by Section 6079, Compiled General Laws. These are the securities which a State bank is authorized to pledge to secure deposits of State funds, and would likewise be the securities which a national bank may pledge under the Act of June 25, 1930, above referred to.

March 5, 1934.

QUALIFICATION NATIONAL BANK AS SECURITIES DEALER

Dear Sir:

The matter of the qualification of Barnett National Bank of Jacksonville as a securities dealer under Chapter 14899, Acts of 1931, as amended by Chapter 16174, Acts of 1933, has been submitted to me for approval as to legality.

In checking up on the matter I have come to the tentative conclusion that a national banking association does not have the power to act as agent or broker for others, i. e., as a dealer in stocks, bonds, mortgages or other securities.

A brief reference to authorities in support of this proposition is as follows:

Grand Forks vs. National Bank vs. Anderson, 172 U. S. 573, 43 L. Ed. 558;

Logan County National Bank vs. Townsend, 139 U. S. 607, 35 L. Ed. 107;

Farmers, etc. National Bank vs. Smith, 77 Fed. 129 (C. C. A.); 7 C. J. 808 et seq., and cases cited.

U. S. C. A., Title 12, Section 24, Annotations under notes 106 and 107.

Before finally ruling on this matter I shall appreciate your giving me the benefit of your viewpoint as representing the Barnett National Bank.

NATIONAL BANKS

March 13, 1934.

QUALIFICATION NATIONAL BANK AS SECURITIES DEALER

Dear Sir:

This concerns my communication to you under date of March 5, 1934, and your response of March 6, 1934.

I am of the opinion that under the Act of February 25, 1927, (U. S. C. A., Title 12, Section 24; Supp. VI, Title 12, Section 24) a national banking association may act as a dealer in investment securities subject to the restrictions contained in said Section.

However, I am of the opinion that under the recent decision of the Supreme Court of the United States in the Texas and Pacific Railway Company vs. Potterff, and City of Marion, Illinois, vs. Sneed, Opinions filed February 5, 1934, a national banking association has no power to pledge any of its assets for the purpose of qualifying as a dealer under the Florida Securities Act.

You understand that the matter in contemplation has to do with the pledge of a part of the assets of the national banking association under the provisions of Chapter 16174, Acts of 1933, amending Section 11 of Chapter 14899, Acts of 1931.

March 30, 1934.

STATUS STATE BANKS UNDER LAWS WITH REFERENCE TO
NATIONAL BANKING ACT OF 1933 CONCERNING
INSURANCE OF DEPOSITS*Dear Sir:*

This acknowledges receipt of your communication of March 12th, and I answer the questions as follows:

1. By Chapter 15875, Acts of Florida 1933, it is provided:

"That hereafter it shall be lawful for any State bank or Trust Company organized under the laws of the State of Florida, to invest, by subscription or purchase thereof, in the capital stock of any Federal agency created by Congress, having for its purpose the guaranteeing of deposits of Banks and Trust Companies."

This Act became effective June 6, 1933, and thus your first question is answered that State banks and trust companies organized under the laws of Florida may purchase Class A stock of the Federal Deposit Insurance Corporation, and assume the obligations incident to ownership thereof.

2. By Chapter 13576, Acts of Florida 1929, Section 19, now appearing as Section 6102, 1934 Supplement to Compiled General Laws of 1927, it

NATIONAL BANKS

is provided that the State Comptroller may in his discretion (under circumstances including inability to meet demand of depositors) forthwith designate and appoint a liquidator to take charge of the assets and affairs of such bank and require of him such bond and security as the Comptroller deems proper, not exceeding double the amount that may come into his hands, and such liquidator shall be subject to dismissal by the Comptroller; and such liquidator is under the direction and supervision of the Comptroller in carrying out the duties of his office.

It is my opinion that the Comptroller could in his discretion, but that he would not be bound so to do, appoint the Federal Deposit Insurance Corporation, which is specifically authorized by sub-section (1) of Section 13A of the Banking Act of 1933 to accept appointment as receiver, as such receiver or liquidator. However, should such appointment be made and accepted, the said Corporation would be under the supervision and direction of the Comptroller, be required to give bond, and otherwise act as would any other receiver or liquidator appointed by such Comptroller.

This seems to have been contemplated by Congress in enacting the said sub-section in that the provises expressly declare that the rights of depositors and other creditors of a state member bank, the receiver of which is the said Corporation, shall be determined in accordance with the applicable provisions of State law, and that such Corporation shall possess the powers and privileges provided by State law with respect to a receiver of such State member bank, except insofar as the same are in conflict with the provisions of this sub-section.

3. In the event that for any reason the Corporation should not be appointed receiver, then its right to receive dividends on the same basis as in the case of a closed national bank would have to be effected by an assignment of claims by depositors. This is true, because there is no provision of State law to accord such recognition, or for the allowance of such claims by any State authority or any other method. Such assignment of claims, however, would be fully effective in protecting the rights of the Corporation, inasmuch as by Chapter 15277, Acts of 1933, Section 1, now appearing as Section 6104, 1934 Supplement to Compiled General Laws of 1927, it is required that all claims of every kind and nature against a State bank or Trust Company placed in liquidation must be sworn to and filed with the liquidator within one year from the date of the qualification of such liquidator, unless the period is extended by the Comptroller; and that unless such is done, the same shall not be included by the liquidator or Comptroller in the distribution of assets.

The next regular session of the Legislature of Florida will begin on Tuesday after the first Monday in April, 1935, that is, April 2nd, 1935.

This letter has been submitted to the Banking Department of the State Comptroller's office, and is concurred in by it.

NATIONAL BANKS

April 11, 1934.

NOT REQUIRED TO PLEDGE ASSETS TO QUALIFY AS SECURITIES
DEALER, BUT MUST POST SECURITY BOND*Dear Sir:*

This is in response to your communication of April 4th, enclosing letter from Mr. W. R. McQuaid under date of April 3, 1934.

Under the recent decision of our Supreme Court in the case of *Leyvraz vs. C. G. Johnson et al*, rendered April 2, 1934, it is my opinion that a State bank may not pledge its assets for the purpose of qualifying as a securities dealer. This does not mean, however, that a State bank may not enter into a surety bond in lieu thereof.

It is therefore impossible for me to rule, as suggested in Mr. McQuaid's letter, that a State bank is required under the laws of Florida to deposit securities in order to comply with the Securities Act.

However, I am still of the opinion that the regulation of this business, even though engaged in by a National bank, is within the power of the State of Florida, and I respectfully suggest that inasmuch as your client has expressed himself in favor of the law and has expressed himself as having no objection to paying the fee required, it might be the best solution of this problem for your client to post a surety bond as permitted under the Act.

I feel relatively certain that the other national banks will willingly comply with this law by doing likewise, and that the result will be beneficial in its effect upon others who are attempting to engage in this business without qualifying. It will also remove a further obstruction in the way of a vigorous enforcement of this Act for the benefit of the public buying securities.

July 17, 1934.

POWER NATIONAL BANKS TO PLEDGE ASSETS TO SECURE
PUBLIC FUNDS*Dear Sir:*

This is in response to yours of the 12th, regarding the above subject. By Act of June 25, 1930, Chapter 604, 46 Stat. 809, now appearing as

Title 12, Section 90, U. S. Code, it is provided:

"Any association may, upon deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is *authorized* by the law of the State in which such association is located in the case of other banking institutions in the State."

I am unable to find any amendment made in this particular sec-

NATIONAL BANKS

tion by any subsequent statute, or particularly by the National Banking Act of 1933, which would in any wise change the decisions of the United State Supreme Court in Texas and Pacific Railway Company vs. Pottorff, and City of Marion vs. Sneed (opinions filed February 5, 1934).

You will note that by Chapter 3864, Acts of 1889, Sections 21, 22, as amended by Chapter 13576, Acts of 1929, Section 8, now appearing as Section 6079, Compiled General Laws of 1927, 1934 Supplement, clerks of courts are specifically given authority to deposit moneys in banks which have qualified under such regulations as may be prescribed by the Comptroller as depositories of public money, which depositories by the same section are authorized and required to give security.

It is therefore my opinion that a national banking association may pledge its assets to secure a deposit of public moneys under the custody or control of a clerk of the circuit court, and that in order to qualify as a deposit of such moneys, it must meet the regulations of the Comptroller in that regard.

SECTION 2

DEPOSITORY OF PUBLIC FUNDS

July 8, 1933.

INTEREST SHOULD BE REQUIRED TO BE PAID ON PUBLIC FUNDS

Dear Sir:

In your letter of the 6th instant you ask to be advised whether there is any provision of State law that will require or permit the payment of interest on funds deposited in banks to the credit of the Plant Board, Board of Control, Agricultural Experiment Station, University of Florida, Florida State College for Women, Florida A. and M. College for Negroes, and/or Florida School for the Deaf and Blind.

There is no statute specifically requiring the payment of interest on such funds by legislatively established public policy, however. It is permissible for banks to pay interest on deposits of all public funds, and this policy may be said to require public officials to deposit public funds in banks which will offer the best inducements as to interest and security.

Section 173 of the Compiled General Laws of Florida, 1927, authorizes the Governor, Comptroller, and State Treasurer to deposit, subject to call, the moneys of the State in such banks in the State as will offer the best inducement as to interest and security.

Section 177 provides, "interest on State moneys deposited in banks under Section 173 shall be payable to the State Treasurer quarterly on the first days of January, April, July and October, and such interest money shall be credited on account of general revenue."

In *Gary et al vs Kissimmee River Cattle Company et al*, 85 Fla. 268, 95 So. 657, the Court held that while the prime duty of county bond trustees having a fund in their custody is to secure its safety by exercising all due care and diligence in executing authority conferred, yet it is their duty to augment as well as to conserve the fund when augmentation is contemplated by the trust.

There was no statute in existence at the time of the rendition of the opinion just referred to, which required county bond trustees to deposit the funds in question as other county funds were required to be deposited but the decision of the Court rested on the legislatively established public policy of requiring officials in the handling of trust or public funds to so exercise their trust duties as to secure the safety of such funds and to augment the same by the accumulation of interest.

In *First American Bank & Trust Company et al vs Town of Palm Beach, etc.*, 96 Fla. 247, 117 So. 900, the Court said that Section 143 and 148, Revised General Statutes of Florida, (which are 173 and 178 of the Compiled General Laws of Florida) established the policy of requiring certain State officials to deposit the moneys of the State in such banks of the State as will offer the best inducement as to interest and security, and that these statutes must be construed to be a recognition by the

DEPOSITORY OF PUBLIC FUNDS

Legislature of the authority of State banks to pledge collateral security to protect deposits of public funds.

The specific point of inquiry in that case was as to the authority of a bank to pledge its assets to secure the deposit of State funds. The funds in question were municipal funds and there was no specific statute on the subject. However, the Court applied what it was pleased to term the legislatively established public policy as the authority of banks to pledge their assets to secure deposits of public funds.

If this legislatively established public policy evidenced by the enactment of Section 173 of the Compiled General Laws can be said to authorize and require banks to secure such deposits by pledging their assets, it is equally applicable to the other requirement, which is that of requiring the augmentation of such deposits by the payment of interest thereon.

It is my opinion, therefore, that public officers may and should require the payment of interest on public funds deposited in either State or national banks, having due regard in all cases, of course, to the matter of security.

January 31, 1934.

**STATE LAW GOVERNS AS TO SECURITY TO BE DEPOSITED WITH
COMPTROLLER NOTWITHSTANDING FEDERAL
"BANKING ACT OF 1933."**

Dear Sir:

Replying to your letter of the 23rd instant, I beg to advise that Section 6079, Compiled General Laws of Florida, 1927, requires all State banks as depositories of public money to give satisfactory security by the deposit of bonds of the United States or of the State of Florida, or other security satisfactory to the Comptroller.

Section 12 B(y) of the Act of Congress, known as the "Banking Act of 1933" is intended to cover all deposits in banks qualified under said Act up to the amount of \$2500. However, banks wishing to qualify as depositories of public moneys must comply with the State statute as to giving of security, where there is such State statute. In other words, the Act of Congress does not and cannot supersede the mandatory requirements of a State statute.

July 11, 1934.

**FEDERAL DEPOSIT INSURANCE NOT AUTHORIZED SECURITY
FOR PUBLIC FUNDS**

Dear Sir:

This is in response to your communication of July 2nd, wherein you inquire whether or not you may legally consider the Federal Deposit

DEPOSITORY OF PUBLIC FUNDS

Insurance as security for the funds of a Board of County Commissioners and Board of Public Instruction deposited in State or national banks.

It is my opinion that, the statutes being specific as to the type of security required, to-wit: A surety bond or certain forms of public bonds to be deposited as security, thereby exclude any other form of security.

While I regret that such may not be considered, the matter is properly one for the Legislature to consider at its next session, and I respectfully suggest your attention thereto.

It is therefore my opinion that Federal deposit insurance may not be accepted in lieu of that form of security prescribed by statute in connection with deposits of public funds.

November 19, 1934.

**MUST COMPLY WITH STATE LAW TO ACT AS COUNTY
DEPOSITORIES, COMPTROLLER TO APPROVE BOND**

Dear Sir:

Replying to your letter of November seventeenth, I beg to advise that Section 2405, Compiled General Laws of Florida, 1927, requires that banks desiring to become county depositories shall execute and deliver to the Board or Boards a surety bond by some company duly authorized to do business in this State, or make satisfactory deposit to the credit of the county, Federal, State, County or Municipal bonds in the amount to be determined by the Board or Boards, and to be approved, both as to amount and validity, by the Comptroller of the State.

The Act of Congress, known as the banking act of 1933, does not and cannot supersede the mandatory requirements of Section 2405, Compiled General Laws of Florida, 1927, and all banks desiring to qualify under the latter act as county depositories, must comply with the requirements of said act, regardless of the Federal statute.

SECTION 3

LIQUIDATORS

January 7, 1933.

CHANGE WOULD NOT SERIOUSLY HINDER OR DELAY LITIGATION

Dear Sir:

This refers to your favor of January 6th, in which you request my opinion as to whether or not changes in Liquidators of the various banks in the State would seriously hinder or delay any existing litigation pending in the Courts.

It is my opinion that such changes of Liquidators would not seriously hinder or delay existing litigation. Such changes of Liquidators would simply require a suggestion being made to the Court, and the new Liquidator substituted for the old.

January 16, 1933.

BOND OF LIQUIDATORS SHOULD BE MADE PAYABLE
TO COMPTROLLER*Dear Sir:*

This refers to your favor of the 16th instant requesting my opinion as to whom the bond of a general Liquidator of all banks in liquidation in the State of Florida should be made payable.

The only section of the statute that I am able to find that covers this question is Section 4162, as amended by Chapter 13576, Laws of Florida, Acts of 1929, wherein we find this language:

"The State Comptroller may, in his discretion forthwith designate and appoint a Liquidator to take charge of the assets and affairs of such banks and require of him such bond and security as the Comptroller deems proper, not exceeding double the amount that may come into his hands, and such Liquidator shall be subject to dismissal by the Comptroller whenever in his judgment such dismissal is deemed necessary or advisable * * *."

This Act also provides that the Comptroller may provide for the administration of the affairs of institutions under the above section by one general Liquidator, etc.

The law provides that the liquidation of banks shall be in the hands of the State Comptroller, and it is the State Comptroller who takes charge of the banks and the assets. The Liquidator is only an Agent, so to speak, of the Comptroller, appointed by him and subject to dismissal by him. It is my opinion that the General Liquidator is responsible for such assets as he takes into his possession to the State Comptroller. Finding no statute to the contrary, it is my opinion that the

LIQUIDATORS

bonds of the general Liquidator, or any Liquidator, should run to or be made payable to the State Comptroller or his successors in office.

January 26, 1933.

**CHARGE AGAINST RECEIVERSHIP FUND TO COVER
CERTAIN SALARIES AUTHORIZED**

Dear Sir:

I am in receipt of your letter of January 25, stating that it has been the policy of the Comptroller's Office to make a charge against receivership of closed banks of seven and one-half cents for each warrant drawn, for payment of salaries of persons employed in the Receivership Department in the Comptroller's office and referred to as extra help, and that the work done is for the benefit of the respective receiverships being administered. You may inquire if you are justified in continuing to make such a charge.

In reply, your attention is called to Sections 4162 and 4164, Revised General Statutes, as amended by Chapter 13576 of 1929. Under the provisions of said Section 4162, as amended, liquidators are required to pay all moneys received into the State Treasurer. Under the provisions of Section 24 of Article IV of the State Constitution, the State Treasurer cannot make disbursements of funds except upon the order of the Comptroller.

Under the Provisions of said Section 4164, it is provided that "all expenses of any liquidator shall be paid out of the assets of such bank," etc.

Since the funds of the closed banks are required to be deposited with the State Treasurer and it is necessary for the Comptroller to draw warrants for the disbursement of such funds, and since such services are for the benefit of such closed banks, it would appear that a reasonable charge against liquidators for such services would be justified under the above quoted provisions of Section 4164, Revised General Statutes.

January 31, 1933.

**LIQUIDATORS APPOINTMENT OF RECEIVER BY COMPTROLLER
NEED NOT BE CONFIRMED BY COURT**

Dear Sir:

There is no law requiring the appointment by the Comptroller of a successor liquidator to be confirmed by court order. The provision of Section 6102 of the Compiled General Laws of Florida 1927, requiring the Comptroller immediately upon appointing a liquidator to serve notice upon the bank officials that he will apply to some circuit judge for an order confirming his action and appointment, does not give the court

LIQUIDATORS

control of the discretionary power of the Comptroller in the selection of a liquidator, "but it provides merely for an opportunity to submit to judicial discretion the one and only question whether the conditions existing warranted the activities of the Comptroller."

Bryan vs Bullock, 84 Fla. 179, 93 So. 182.

May 13, 1933.

**DEPOSITOR WHO FAILS TO AVAIL HIMSELF OF OPPORTUNITY TO
WITHDRAW 20% DURING 90 DAY LIMITATION, DOES NOT
HAVE PREFERRED CLAIM, IF BANK FAILS AT
END OF THAT PERIOD**

Dear Sir:

Chapter 14657, Acts of 1931, (House Bill No. 403) was enacted primarily for the benefit of the banks, and there is nothing to indicate that the Legislature intended to create any preference in favor of depositors to the extent of 20% of the deposits.

The Bill merely authorizes banks to limit withdrawals to 20% in event the bank senses a run. The title to the Act recites that it is for the protection of State banks against excessive withdrawals or runs, and this seems to be borne out in every phase of the Act itself. The limitation is required to have the consent and permission of the Comptroller, and the Comptroller is thereupon required to immediately dispatch to such bank a bank examiner, who shall examine into its affairs to determine its solvency.

This, taken in connection with other provisions of the banking laws, requires that if upon such examination the bank is found to be insolvent, the Comptroller is authorized to take over the affairs of such bank, and appoint a receiver or liquidator therefor. It is only contemplated that solvent banks will be permitted to operate under the ninety-day limitation on withdrawals. This was never intended to apply to insolvent banks.

It is my opinion, therefore, that depositors who fail to avail themselves of the opportunity of withdrawing 20% during the ninety-day limitation on withdrawals by a bank, which at the end of said period was closed and taken over by the Comptroller does not have a preferred claim on his deposit to the extent of 20%.

March 3, 1933.

**UNDER FREEZING ORDER CERTIFICATE HOLDER CANNOT
BE GIVEN PREFERENCE**

Dear Sir:

Replying to your letter of the 1st instant, it is my opinion that a bank re-opened by a freezing order under Chapter 11849, Acts of 1927,

LIQUIDATORS

cannot lawfully use its assets as a means of paying in full its liability to a depositor holding a certificate of deposit under the freezing order, as this would be to give a preference to such certificate holder.

The freezing order may be made upon consent in writing of the representatives of an amount of the deposits aggregating 75%, and upon such reasonable terms and conditions as the Comptroller may fix as one of the terms upon which business is permitted to be resumed. Thus 25% in amount of the depositors may be forced to abide the freezing order without their consent.

The freezing order usually provides for the allowance of withdrawals in cash up to a small percentage and a part of the balance to be repaid over a certain period and the remainder to be paid, if, as and when assets are available for that purpose. If the bank is permitted to exchange a part of its unliquid assets for certificates of deposit, then it might exchange all of such unliquid assets and thereby practically deplete its assets and leave some of the depositors without any source from which their claims might be satisfied. I do not believe this could be done lawfully without the consent of all the certificate holders.

I do not doubt that there may arise instances in which it would perhaps be advantageous to dispose of certain property assets of the bank, but I have tried to look at the matter purely from a legal rather than an expedient point of view.

In other words, the freezing order becomes a statutory contract between the depositors and the re-opened bank, the spirit of which should not be violated by the bank satisfying in full the claims of some of the depositors in preference to others.

June 22, 1933.

**CONSERVATOR NOT PROHIBITED FROM BORROWING MONEY TO
BE USED FOR PAYING CERTAIN PERCENTAGE TO DE-
POSITORS IN BANK UNDER CONSERVATORSHIP**

Dear Sir:

In response to your letter of this date I have examined Senate Bill No. 124, Chapter 15879 in connection with House Bill No. 482, Chapter 15872 Acts of 1933, and I find no prohibition in either act against the conservator of a bank borrowing money from another bank and depositing same in the lending bank to be used in paying off a certain percentage to depositors in the bank under conservatorship, without requiring security for the deposit so made in the lending bank.

House Bill No. 482 authorizes the borrowing of money, but is silent as to where or how the same shall be kept pending its use.

LIQUIDATORS

July 12, 1933.

TIME FOR PAYMENT OF NOTES IN HANDS OF LIQUIDATOR MAY
BE EXTENDED BY COMPTROLLER IF BY SUCH EXTENSION
MORE MONEY CAN BE REALIZED FROM THE NOTES

Dear Sir:

Replying to your letter of the 12th instant, it is my opinion that the Comptroller may in the exercise of his reasonable discretion extend the time for payment of notes given to State banks, which banks have become insolvent and placed by him in liquidation in all cases where it is necessary to do so in order to more effectively conserve the value of the assets of the bank for the benefit of creditors. Such discretion may be exercised through the liquidator or receiver in charge of the liquidation of such bank.

I do not believe the time for payment of notes held by the liquidator or receiver should be extended except in such cases where more could be realized on such notes by an extension, as the law contemplates an expeditious liquidation of all insolvent banks.

On the other hand, where it is possible to realize the full value of such notes only by an extension of the time of payment, I think the Comptroller would be well within his discretion in doing so.

July 15, 1933.

LIQUIDATOR AUTHORIZED TO APPOINT AGENTS AND OTHER
EMPLOYEES; AGENTS MAY OPEN BANK ACCOUNTS TO PROTECT
FUNDS; AGENTS MAY DRAW CHECKS ON FUNDS TO TRANS-
MIT SAME TO STATE TREASURER

Dear Sir:

On my return to the office I find your telegram of July 14.

I find that Mr. Tom Watson has advised the General Liquidator that he has full authority to appoint liquidating agents and other employees to assist in the general liquidating of the affairs of closed banks and trust companies. Mr. Watson also advised the general liquidator that he has full authority to have his liquidating agent open a bank account in the name of the General Liquidator, for the sole and only purpose of keeping safely funds collected, and that the liquidating agent, in the name of the General Liquidator, may draw checks only for the purpose of transmitting these funds to the State Treasurer; that the General Liquidator, nor his agents, have any authority to draw any checks for any purpose except to transmit funds to the State Treasurer. This, of course, would not apply to liquidator's trust accounts, where checks have to be drawn frequently for various purposes in working out the trusts.

It is my opinion that Mr. Watson has given correct advice in the

LIQUIDATORS

matter. See Sections 19 and 20 of Chapter 13576, Acts of 1929, being Section 6102, Compiled General Laws, 1932 Supplement.

The authority given the liquidator must be strictly construed, as determined by the Court in 144 So. 327.

May 8, 1934.

**NECESSITY OF HOLDER OF CERTIFICATE OF DEPOSIT ISSUED
UNDER PRIOR AGREEMENT TO FILE PROOF
OF CLAIM WITH LIQUIDATOR**

Dear Sir:

This is in response to your communication of May 1, 1934, in which you ask whether or not it is necessary under Section 6104, Compiled General Laws of 1927, as amended by Chapter 15877, Acts of 1933, for the holder of a certificate of deposit issued pursuant to a freezing agreement and order entered under Section 6108, Compiled General Laws of 1927, as amended, (appearing 6108, Compiled General Laws 1927, 1934 Supplement), to file a proof of claim with a liquidator appointed upon the closing of such bank subsequent to its re-opening under such prior freezing order and agreement.

It is my opinion that such is not necessary. This opinion is based upon the holding of the Supreme Court in the case of Campbell vs. Vining, 133 So. 555, wherein it was specifically held that as to assets which the bank held as trustee, the provisions of said Section 6104, do not apply; and the holding in Becker vs. Amos, 141 So. 136, to the effect that the assets involved in the freezing order should be held separate and segregated, and that the bank becomes a trustee of the assets re-delivered to it by the Comptroller, when he allows it to re-open, and as such trustee, is charged with the duty of administering such assets for the benefit of those who had permitted the bank to re-open; and that it then becomes the duty of the liquidator of such trustee bank, upon its subsequent closing, to execute the trust, chargeable against any assets of the old bank coming into his hands.

July 12, 1934.

**BANKS CANNOT QUALIFY AS DEPOSITORY FOR COUNTY FUNDS
WHEN BANK IS IN HANDS OF CONSERVATOR**

Dear Sir:

This is in response to your communication of June 18th, wherein you inquired whether or not a State bank in the hands of a conservator pursuant to the provisions of Chapter 15879, Acts of 1933, may qualify as a depository for county funds under Sections 2404-5, Compiled General Laws of 1927, 1934 Supplement.

LIQUIDATORS

It is my opinion that the requirements of Sections 2404-5, Compiled General Laws of 1927, 1934 Supplement, are specific and certain in their requirements, and that it is utterly impossible for a bank in conservatorship to comply therewith.

It is therefore my opinion that a bank in the hands of a conservator may not legally qualify as a depositor for public funds of a board of county commissioners or a board of public instruction.

July 19, 1934.

**RECEIVERS' CERTIFICATES OF PROOF OF CLAIM—LOST
AND DUPLICATE CERTIFICATES**

Dear Sir:

This is in response to yours of the 14th instant, wherein you state that it has been customary for receivers of closed State Banks to issue receivers' certificates of proof of claim to those persons who properly make their claim against a closed bank.

You ask whether or not the liquidator would be legally justified in delivering dividend warrants to those persons who had lost their certificates and who make an affidavit that the certificate has not been sold or transferred, and who give their receipt for each individual dividend warrant.

You inquire also whether the liquidator would incur any liability in issuing a duplicate certificate plainly marked "Duplicate," if he has had no notice from any person claiming to be an assignee of the original.

You will note that the form of certificate of proof of claim which you enclosed with your communication specifically states:

"NO ASSIGNMENT OF THIS CLAIM, or any portion thereof, will be recognized in the payment of dividends, unless notice of such assignment is given to the receiver and entered upon their books before such dividends are declared, as evidenced by their endorsement hereon."

It is my opinion that there not having been prior notice actually received by the liquidator that an assignment has been made, he may deliver the dividend warrant to the original claimant upon such affidavit and receipt therefor as you mention.

It is further my opinion that the liquidator incurs no liability in issuing a duplicate certificate plainly marked as such, without having received notice of any assignment.

August 8, 1934.

PROOF OF CLAIM MUST BE FILED WITH LIQUIDATOR

Dear Sir:

This is in response to your communication of July 24, 1934, in re: Necessity of Holders of Certificates of Deposit and Cashier's Checks

Issued under Prior Freezing Agreement to File Proof of Claim with Liquidator.

The Southern Bank & Trust Company, pursuant to a freezing agreement, issued to each depositor a cashier's check representing five percent of the deposit, and a superior certificate of deposit payable on or before October 30, 1931, representing fifty-five percent of the deposit, and a subordinate certificate of deposit representing the balance.

To date dividends totalling 20.865% of the superior certificate of deposit have been paid, and a further dividend is now in contemplation. In the payment of these dividends on the superior certificates of deposit, cashier's checks were issued payable to the payees or assignees of the said certificates.

The question now arises whether the holders of these cashier's checks, issued at the time of the reopening, and those issued subsequent thereto but prior to the final closing of the bank followed by statutory liquidation, are entitled to the payment, regardless of whether they have filed claims within the statutory period of one year following the appointment of a liquidator.

I call your attention to the approval of the method of liquidation involving this same bank in the case of *Becker vs. Amos*, 141 So. 136. I also call your attention to my prior ruling of May 8, 1934, wherein I held that it is not necessary for the holder of a certificate of deposit issued under a prior freezing agreement, to file proof of claim with the liquidator under Section 6104, Compiled General Laws of 1927, as amended by Chapter 15877, Acts of 1933.

It is my opinion that the same rule applies to the holders of these cashier's checks, and that it is not necessary that they should have filed a proof of claim. This I understand to be the rule applicable in the light of the *Becker* case supra, and the cases of *Campbell vs. Vining*, 133 So. 555, *Smith vs. Reddish*, 151 So. 273, and *Willmer vs. Newson*, 149 So. 3.

August 8, 1934.

RIGHTS OF THOSE FILING BELATED PROOF OF CLAIM TO SHARE
IN PRIOR DIVIDENDS

Dear Sir:

This is in response to your communication of June 26th, wherein you inquire whether or not a depositor in a bank which has gone into liquidation, who pursuant to Chapter 15877, Acts of 1933, files his proof of claim after the expiration of the original twelve-month period, is entitled to participate in prior dividends that have been paid.

It is my opinion that under this Act of 1933, the same rule should be applied as was applied by the Supreme Court in the case of *State ex rel Duke vs. McIntosh*, 145 So. 181.

This means that those who file such belated claims under the Act of 1933, should then be permitted to participate to the full amount of

LIQUIDATORS

the next dividend payment, plus the amount of any dividend or dividends previously paid to creditors who file promptly, provided sufficient assets remain; and that such payment should take place at the time subsequent dividends are paid.

It seems to me that if any other rule should be applied, the effect of this Act of 1933 in amending the prior statute to allow such action, would be rendered nugatory.

August 8, 1934.

AUTHORITY OF LIQUIDATOR TO COMPROMISE STOCK ASSESSMENT

Dear Sir:

This is in response to your inquiry of August 6, 1934, wherein you ask whether or not a liquidator or a conservator of a State bank has authority to compromise two certain stock assessments. One is to be compromised with the heirs of the deceased stockholder in return for a conveyance of land, and the other is to be discharged upon the release by the stockholder of his deposit in the bank, as well as the deposit of another totalling twice the amount of the assessment. I note also that the original appraisal of the assets of the bank showed an ultimate value of around fifty-three cents on the dollar.

The statute, as amended by Chapter 13576, Acts of 1929, Section 19, and now appearing as Section 6102, Compiled General Laws of 1927, 1934 Supplement, provides that a liquidator, under the direction and supervision of the Comptroller "and upon the order of a court of competent jurisdiction, may sell or compound all bad or doubtful debts, * * *."

While it is no doubt true that there is no right of set-off by a stockholder in the sense that he has the right to off-set a claim due him by the bank against his statutory liability for assessment, it nevertheless is true that the statutory assessment liability and the proceeds therefrom, constitute a trust and a trust fund to be administered by the liquidator for the benefit of all creditors. While the statutory liability of the stockholder may not constitute a "debt" in the sense that when sued therefor he has such right of set-off, I believe that it does constitute a debt within the terms of the statute above quoted.

In this opinion I am supported primarily by the well-reasoned Nebraska decision of *State vs. German Savings Bank*, reported in 91 N. W. 414. The statute in Nebraska at that time gave the receiver the power to "sell and compound all bad or doubtful debts when approved by the Court or judge."

This was held to authorize the receiver, subject to such approval, to compromise the liability of stockholders on the theory that it was a debt due to the trust estate, and that such power existed as it does in executors, administrators, and other trustees.

However, it is obvious that such must be done with the approval of the Court as provided in the statute.

LIQUIDATORS

In closing, I quote the words of warning issued by Roscoe Pound, then Supreme Court Commissioner, who wrote a concurring opinion in the said Nebraska case:

"I think this Court ought to state, clearly and emphatically, that compromises of this sort should be thoroughly investigated and maturely considered before they are authorized, * * * But the proceeding is undeniably capable of abuse, and it would be most unfortunate to permit any impression to go abroad that either ill considered or collusive compromises will be tolerated."

August 15, 1934.

**LIQUIDATORS DIVIDEND CHECK PAYMENT TO GUARANTY
SECURITY CORPORATION TO BE DELIVERED
PURSUANT TO ORDER OF COURT**

Dear Sir:

This is in response to your communication of June 15th, regarding the above matter, the answer to which has been delayed because of the necessity of further correspondence.

From this correspondence I ascertain that you now are closing out the affairs of the Guaranty Trust & Savings Bank, and find a dividend check payable to Guaranty Security Corporation; that the said Guaranty Security Corporation was reincorporated under the general Corporation Law of 1925, and thereafter and on or about March 8, 1927, a certificate of dissolution was obtained from the Secretary of State.

We presume that this certificate of dissolution was issued pursuant to Sections 44 et seq. of the said Corporation Law of 1925 (Chapter 10096, Acts of 1925), now appearing as Section 6570 et seq. Compiled General Laws of 1927.

Some four years later a partition suit was instituted and the assets of the corporation were partitioned and its entire affairs wound up. For some reason the deposit in the said Guaranty Trust & Savings Bank was overlooked and not included in the winding up of the corporation's affairs.

You now ask to whom this dividend warrant may be delivered.

It is my opinion that you are not authorized to deliver this warrant to anyone except pursuant to order of Court, and that neither the corporation itself nor any of its former officers or directors have any claim thereto.

October 29, 1934.

**LIQUIDATORS—APPLICATION OF LAW IN RE CANCELLATION OF
DIVIDENDS AFTER TWO YEARS**

Dear Sir:

Replying to your favor of October thirteenth, I beg to advise as follows:

LIQUIDATORS

Chapter 15877, Laws of Florida, Acts of 1933, relating to bank liquidation, provides:

"Any dividend check not called for within two years after the same is issued shall be cancelled, and the moneys represented thereby shall be put back into the general account for distribution to depositors and creditors who may have claimed their dividends: * * *."

Where there have been cancellations pursuant to the quoted provision of the Act, the former total of outstanding claims should be reduced by the sum total of such cancellations and the remainder used as a basis for computation in paying subsequent dividends.

SECTION 4

STOCK ASSESSMENTS

May 17, 1933.

COMPTROLLER AUTHORIZED TO APPROVE COMPROMISE
SETTLEMENT*Dear Sir:*

In your recent inquiry, you ask to be advised whether you can legally approve a compromise settlement on stock assessments against bank shareholders where the same have not been reduced to judgments.

You state that you have several instances where it is plain that you will not be able to secure the full amount of the assessment by going to court or otherwise, and in which you are offered what seems to be the maximum possible recovery.

Section 6059 of the Compiled General Laws of Florida, makes stockholders individually responsible equally and rateably for all the contracts, debts and engagements of the bank to the extent of the amount of their stock at the par value thereof. This is for the protection and benefit of the depositors, and the depositors have the right to look to this protection to the full extent of the financial ability of the stockholders to respond.

There may be and probably are instances where holders of stock are not financially able to respond to this liability in full. No doubt there are cases where even on a judgment, the full amount could not be realized. In such instances, it would seem futile to require the assessment to be reduced to judgment if through compromise the same results could be reached.

I think in placing the administration of the affairs of State banks in the hands of the Comptroller, the Legislature evidently intended to vest in him certain discretionary powers in the interest of an economical and speedy administration of the liquidation of insolvent banks.

It is my opinion, therefore, that you would have the authority to approve compromise settlement on stock assessments, where the matter has not been brought in litigation, provided, of course, the interest of depositors are not sacrificed.

May 30, 1933.

ASSESSMENT OF STOCKHOLDERS UNDER SECTION 4146, WHILE
BANK IS IN HANDS OF CONSERVATOR, IS UNLAWFUL*Dear Sir:*

In your letter of May 29, you state that you have five banks in Conservatorship and that you are considering the levying of an assessment

STOCK ASSESSMENTS

against the shareholders, and ask to be advised whether such assessment should be under Section 4146 or 4162 of the Revised General Statutes.

Senate Bill No. 124, Chapter 15879, Acts of 1933, authorizes the appointment of a conservator for any State bank or trust company when the Comptroller deems it necessary to conserve the assets of such bank or trust company, in which case the conservator, under the direction of the Comptroller, takes charge of the records, books and assets of every description of such banks, and he has all the rights, powers and privileges, possessed now or hereafter given to receivers or liquidators of insolvent State banks. It is provided in the act that during the time such conservator remains possessed of such banks, the rights of all parties, with respect thereto, shall be the same as if a receiver or liquidator had been appointed therefor. As I construe the provisions of the Act, the bank, as such, ceases to function while it is in the hands of the conservator. The conservator is the agent of the Comptroller, for the purposes for which he was appointed.

The assessment under Section 4146, Revised General Statutes, is made by the bank on the stockholders pro rata for the amount of capital stock held by each. The assessment under this act is for the benefit of the bank for rehabilitation purposes. In as much as the bank, as such, ceases to function upon the appointment of a conservator, under Senate Bill No. 124, Chapter 15879, Acts 1933, I do not believe that the bank, so long as it continues in the hands of a conservator, could lawfully levy the assessment authorized by Section 4146. In other words, the bank is taken over by the Comptroller and is operated by him through his agent, the conservator.

It seems to me that the only assessment that could be made while the bank is in the hands of the Comptroller, through his agent, the conservator, would be under Section 4162, for the purpose of paying the debts of the bank. I do not think the fact of the bank being in the hands of the conservator would, however, preclude a voluntary paying in by the stockholders of a sufficient amount to make good the deficiency of the capital stock, for the purpose of rehabilitation of the bank and resumption of business. I think that Senate Bill No. 124, Chapter 15879, Acts 1933, contemplates the working out of the conditions of the bank and placing it back in a sound condition where its affairs may be turned back to the bank for resumption of business.

SECTION 5

POWER TO PLEDGE ASSETS

April 11, 1934.

POWER OF BANK CHARTERED BY STATE OF FLORIDA TO
PLEDGE ASSETS*Dear Sir:*

This acknowledges receipt of your communication of March 23rd, in which you enclose letter from Florida Bankers Association, requesting a ruling as to the power of a bank chartered under the laws of Florida to pledge its assets to secure accounts as listed in said letter. The list contained in said letters is as follows:

- Funds of Florida municipalities.
- Funds of municipalities of States other than Florida.
- Funds of Boards of County Commisisoners of Florida counties.
- Funds of Board of County Commissioners of counties of States other than Florida.
- Funds of Boards of Public Instruction of Florida counties.
- Funds of Boards of Public Instruction of counties of States other than Florida.
- Funds of Florida State and County Tax Collectors.
- Funds of Florida State and County Tax Assessors.
- Funds of State Treasurer of Florida.
- Funds of the State Treasurer of Florida held as County Treasurer ex officio.
- Funds in receivers' accounts of the Treasurer of the State of Florida.
- Funds of the State Farm of Florida, in all capacities.
- Funds of the Trustees Improvement Fund.
- Funds of the Florida Inland Navigation District
- Fund of the Registry U. S. Court.
- Funds of a Postmaster of the U. S.
- Funds of the Comptroller of the Currency of the U. S. in all capacities.
- Funds in the hands of Trustees for County Bridges.
- Funds of Trust of the Trust Department deposited in the banking department of the same bank.
- Bankruptcy funds.
- Funds of the U. S. Government.
- Fiscal Agent Deposits of a Federal Reserve Bank.
- Funds of the Postal Savings System.
- Funds of the State Board of Control for Account of the colleges.
- Funds of the State Road Department.
- Funds of the Florida State Farm at Raiford, in all capacities.

POWER TO PLEDGE ASSETS

It is my opinion that a State bank may pledge its assets to secure any of the above listed accounts with the following exceptions:

Funds of municipalities of States other than Florida.

Funds of Boards of County Commissioners of Counties of States other than Florida.

Funds of Boards of Public Instruction of Counties of States other than Florida.

Funds of the Registry of a United States Court.

Bankruptcy funds.

Regarding funds of a postmaster of the United States, these may be secured by a pledge of assets only in the event that such funds are funds belonging to the Federal government, as distinguished from any personal funds which he might have.

Funds of the Comptroller of the Currency of the United States may be secured by a pledge of assets only as to those funds which are public funds of the United States.

Fiscal agent deposits of a Federal Reserve bank may be secured by a pledge of assets only as to those deposits, regarding which the Federal Reserve Bank is acting as the fiscal agent of the United States government.

May 7, 1934.

POWER TO SECURE CITY FUNDS BY PLEDGE OF ASSETS

Dear Sir:

This is in response to your communication of April 30, 1934, wherein you ask whether or not a State bank is authorized to pledge a part of its assets to secure funds of the Orlando Securities Commission on a deposit in such bank.

It is my understanding that the Orlando Utilities Commission is part and parcel of the city government of the City of Orlando, and under such circumstances its funds are public funds. Such public funds may be secured by a pledge of assets by a State bank.

May 10, 1934.

STATE BANKS AUTHORIZED TO PLEDGE ASSETS TO SECURE INVESTED TRUST FUNDS DEPOSITED BY STATE-CHARTERED TRUST COMPANIES

Dear Sir:

This is in response to your communication of April 30th, wherein you inquire whether or not State banks are authorized to pledge their assets to secure uninvested trust funds deposited with them by State-chartered trust companies.

POWER TO PLEDGE ASSETS

Under the provisions of Section 6128, Compiled General Laws of 1927, 1934 Supplement, it is made unlawful for any trust company to deposit its uninvested funds in any bank, trust company, corporation, or individual, without first taking full and adequate security therefor, and the types of security allowed are enumerated.

By Section 7962, Compiled General Laws of 1927, an officer, director, or employee violating the provisions of said Section 6128 is deemed guilty of a misdemeanor.

It would be futile, indeed, for the Legislature to have required trust companies to take such security without at the same time to have impliedly granted the power to make such a pledge.

It is my conclusion, therefore, that State banks may make such a pledge of their assets.

May 25, 1934.

**BANKRUPTCY FUNDS CAN NOT BE SECURED BY PLEDGE
OF STATE BANK'S ASSETS**

Dear Sir:

This is in response to your communication of May 22, 1934, which refers to my prior opinion under date of April 11, 1934, addressed to the Comptroller, with reference to the power of a bank chartered by the State of Florida to pledge its assets.

In the prior opinion I ruled that bankruptcy funds (which I understand to be funds of the bankrupt estate in the hands of the trustee) could not be deposited in a State bank and secured by a pledge of its assets.

This ruling is based upon the theory that such funds are not public funds as in them the United States has no interest. Thus it is that upon the insolvency of the depository, the United States is not entitled to any priority. The ruling is also based upon the theory that the bankruptcy statute does not contemplate a pledge of assets to secure such deposits, but rather contemplates a surety bond with the United States Government as the obligee. (See U. S. C. A., Title 11, Sections 75 and 101.)

It is also well settled that the surety on such depository bond, upon paying the trustee the amount of such deposit, guaranteed by such bond, does not then acquire any right by subrogation to any priority.

You understand that this opinion in no manner passes upon the power of a State bank to pledge its assets as collateral to a surety who undertakes to become surety upon such a depository bond. I have not as yet been called upon to rule on that question, and of course, refrain from doing so until it becomes necessary.

SECTION 6

MISCELLANEOUS

January 11, 1933.

CONSTITUTIONAL WRIT APPLIES ONLY IN CASE SPECIFIED

Dear Sir:

I am in receipt of your letter of the 10th instant, enclosing copy of Constitutional Writ by the Supreme Court of the State in the case of E. M. Porter, et al., vs. H. F. Atkinson, et al., and making inquiry if said Writ ties your hands against exercising any statutory discretionary powers vested in you as Comptroller in charge of banking and building and loan institutions of the State.

In reply I beg to say that in my opinion said Writ applies only to that particular case and as recited in the Writ, and does not apply to or effect any other banking or building and loan matters under your jurisdiction.

June 21, 1933.

SEVENTY-FIVE PER CENT OF TOTAL UNPAID FROZEN DEPOSITS
NECESSARY TO OBTAIN ORDER*Dear Sir:*

At your request of June 20, I have considered the case of McConville vs. Fort Pierce Bank and Trust Company, 135 So. 392, with reference to its applicability to Chapter 15874, Acts of 1933, Laws of Florida, relating to the power of 75% of the deposits to bind the other 25% as to the dispositions of the assets of the institution.

It seems to me that the principal of law announced in the McConville case is applicable to that particular provision of Chapter 15874, Acts of 1933, and that the provision authorizing 75% of the deposits to bind the 25% is valid and enforceable.

October 26, 1933.

COMPTROLLER AUTHORIZED SURRENDER CERTIFICATE OF
DEPOSIT ACQUIRED UNDER CHAPTER 14672, ACTS 1931,
UNDER PROVISION OF CHAPTER 15874, ACTS 1933*Dear Sir:*

This is in answer to your communication of October 23rd, in which you request my opinion as to your authority to surrender a certificate of deposit acquired by you pursuant to Chapter 14672, Acts of 1931, which certificate is to be surrendered in accordance with the provisions of Chapter 15874, Acts of 1933.

You will note that Section 2 of the said Act of 1931 provided as to said certificate of deposit that the Comptroller "shall use due diligence

MISCELLANEOUS

in making settlement on said liquidator's certificate, and said certificate of deposit, and make proper distribution of the funds received therefrom."

It is my opinion that you are authorized to surrender the certificate involved for the purpose as stated.

November 15, 1933.

COMMON AND PREFERRED STOCK CONSTITUTE CAPITAL STOCK
OF BANKS AND TRUST COMPANIES

Dear Sir:

This is in reply to your inquiry of November 15th, relative to Senate Bill 585, being Chapter 15873, Acts of 1933, relating to the issuance of preferred stock by banks and trust companies.

The question asked is whether or not the combined common stock and preferred stock issued by the bank and outstanding, constitute the capital of the bank or trust company.

Said Act of 1933 provides for the issuance of preferred stock by banks, banking firms, banking companies or trust companies pursuant to the procedure therein outlined. Section 4 of said Act provides as follows:

"The term 'common stock' as used in this title, means stock of a banking company other than preferred stock issued under the provisions of this Act. The term 'capital' as used in provisions of law relating to the capital of banks, banking firms, banking companies or trust companies, shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired. The term 'capital stock' as used in Sections 4126, and 4127 of the Revised General Statutes of Florida, as amended, shall mean only the amount of common stock outstanding; and the term 'stock' as used in Section 4128 of the Revised General Statutes of Florida, as amended, shall refer only to common stock."

Said Section 4126, Revised General Statutes of 1920, as finally amended by Chapter 13576, Acts of 1929, provides the minimum capital for the organization of a banking company, and provides that the capital stock shall be divided into shares of \$100 each, payable in lawful money of the United States.

Said Section 4127, Revised General Statutes of 1920, provides for the payment in full of the capital stock of a banking company before it may receive authority to commence business.

It is my opinion, therefore, that said Section 4 specifically answers your question, and that in ascertaining the amount of the *capital* of a banking company, the same shall be computed on the basis of the unimpaired common stock plus the amount of outstanding and unimpaired preferred stock.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
MISCELLANEOUS

November 22, 1933.

COMMON STOCK AND PREFERRED STOCK CONSTITUTE CAPITAL
STOCK OF BANKS AND TRUST COMPANIES

Dear Sir:

This is in reply to your communication of November 21st, relative to my opinion under date of November 15th, addressed to the Honorable J. M. Lee, as Comptroller with reference to the construction of Section 4126, Revised General Statutes of 1920, as finally amended by Chapter 13576, Acts of 1929, following the adoption of Chapter 15873, Acts of 1933.

Your understanding of my opinion is correct, and where a minimum capital of \$25,000 is required, this may be made up of part common stock and part preferred stock, so long as the total unimpaired common stock plus the outstanding and unimpaired preferred stock aggregates the minimum capital requirement.

January 15, 1934.

DIVIDEND WARRANTS, WHICH ARE OUTSTANDING AND UNPAID
SHOULD BE CANCELLED IF ALL REQUIREMENTS OF SECTION
2, CHAPTER 15877 ACTS OF 1933 ARE COMPLIED WITH

Dear Sir:

This refers to your favor of January 13, relative to Senate Bill Number 688, Chapter 15877, Acts of 1933.

You request my opinion as to whether or not upon the application of the Guaranty Trust and Savings Bank you should cancel the undelivered dividend warrants which are now outstanding and unpaid, in accordance with Section 2 of this Act.

If all of the requirements of Section 2 have been complied with, it is my opinion that you should cancel these unpaid warrants.

It is my opinion that Section 2, when it is fully complied with, does not require the advertising which is required in Section 1 of the Act. Section 2 does not appear to require any advertising, but it is wholly a matter of the lapse of the time.

July 2, 1934.

CANCELLED DIVIDEND WARRANTS, PAYMENT COST OF ADVERTISING
MUST BE DEDUCTED FROM

Dear Sir:

This is in response to your communication of June 25, 1934, wherein you ask whether or not the cost of advertising the unclaimed dividend warrants for cancellation under Chapter 15877, Acts of 1933, may be deducted from the funds represented by such warrants, where there are

MISCELLANEOUS

not sufficient funds in the general receivership account to pay such expense.

It is my opinion that this Act contemplates the net amount after payment of the expenses of the receivership, and therefore, the distribution may be made after paying such expenses.

August 27, 1934.

POWER TO PLEDGE ASSETS TO SECURE MONEYS PAID INTO COURT

Dear Sir:

This acknowledges yours of the 24th inst., regarding the power of State Bank to Pledge Its Assets to Secure Deposit of Monies Paid into Court—Chapter 15996, Acts of 1933, (Section 4355 (1) et seq., C. G. L. 1927, 1934 Supplement).

The enumeration contained in our opinion of April 11th is simply the list contained in the request for our opinion and did not purport to be all inclusive.

It is my opinion that unquestionably under Chapter 15996, Acts of 1933, (Section 4355 (1) et seq., C. G. L. 1927, 1934 Supplement), banks chartered under the laws of Florida have the power to pledge their assets to secure monies paid into any State Court and received by the officers thereof, in any cause pending or adjudicated in such Court. In such case the remaining provisions of such Chapter should be complied with.

As to the power of a National Bank concerning like funds, I express no opinion, but call your attention to Title XII, Section 90, U. S. C. A., which is that provision of the National Banking Act, as amended by Chapter 604 of the Act of June 5, 1930. The recent cases, decided February 5, 1934, by the Supreme Court of the United States, to-wit: Texas & Pacific Railway Co. vs. Potroff and City of Marion vs. Sneed, have to do with the interpretation of this amendment.

I also call your attention to a decision of our Supreme Court rendered April 2, 1934, in the case of Loyvraz vs. Johnson .

Nor do I in this opinion express any conclusion concerning monies paid into a Federal Court which is covered by Title 28, Section 851, U. S. C. A.

August 17, 1934

TRUST COMPANY, FOREIGN, NOT AUTHORIZED TO SERVE AS EXECUTOR AND TRUSTEE EXECUTED BY PRESIDENT

Dear Sir:

Answering your letter of the 15th inst., I beg to say in my opinion a foreign trust company is not authorized under our statutes to serve as

MISCELLANEOUS

Executor and Trustee under the Will of a resident of the State of Florida. See, however, Section 6145, Compiled General Laws of Florida, 1928, limiting the exercise of trust functions to corporations of this State, but with a special provision that nothing in the Section should apply to any Trustee, Executor or Administrator appointed under any Will executed by a non-resident.

July 18, 1933

STOCKHOLDERS ARE LIABLE UNDER THE LAW FOR THE FULL
VALUE OF THEIR STOCK, IN ADDITION TO THE AMOUNT
INVESTED THEREIN, FOR BENEFIT OF THE
CREDITORS OF THE COMPANY

Dear Sir:

In your letter of July 1st you ask my opinion as to the construction of Section 6059, as amended, and whether or not the same would apply to a trust company doing a strictly trust business, and not engaged in the banking business.

Section 20 of Chapter 3864, Acts of 1889, being Section 6059, Compiled General Laws of Florida, 1927, which was in effect until amended by the 1929 Legislature, provided that:

"Stockholders of every banking company shall be held individually responsible equally and ratably and not for one another for all contracts, debts and engagements of such company to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares."

This was amended so as to include trust companies by Chapter 13576, Acts of 1929, as follows:

"Stockholders of every banking, savings and trust company, shall be held individually responsible equally and ratably and not for one another, for all contracts, debts and engagements of such company to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares."

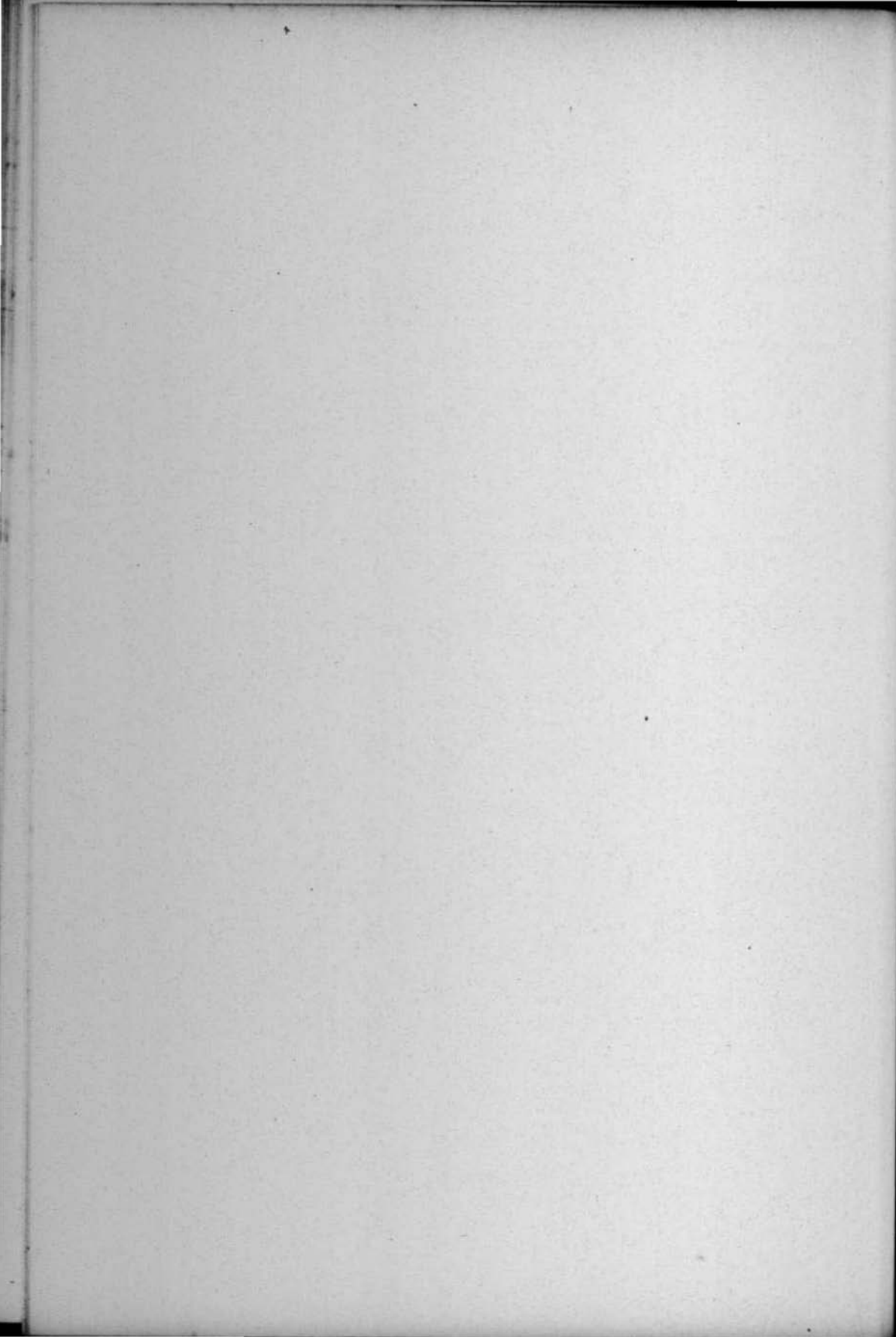
The liability of stockholders of a trust company or of a bank is not for the special benefit of any class of creditors, as for example depositors, but is for the benefit of "all contracts, debts and engagements of such company." See the case of *McNeill v. Pace*, 69 Fla. 349, 68 So. 177.

It is true that a trust company is required by Section 6131, Compiled General Laws of Florida, 1927, to deposit with the State Treasurer certain funds to be held "subject to the payment of any judgment or decree which may be rendered against said company." This is a condition which must be met by a trust company before it can transact business and it is not required of a bank which does not do a trust business. However,

MISCELLANEOUS

there is nothing in the nature of this requirement which would, in any way, relieve stockholders of a trust company from the liability imposed upon them by Section 6059, Compiled General Laws of Florida, 1932 Supplement.

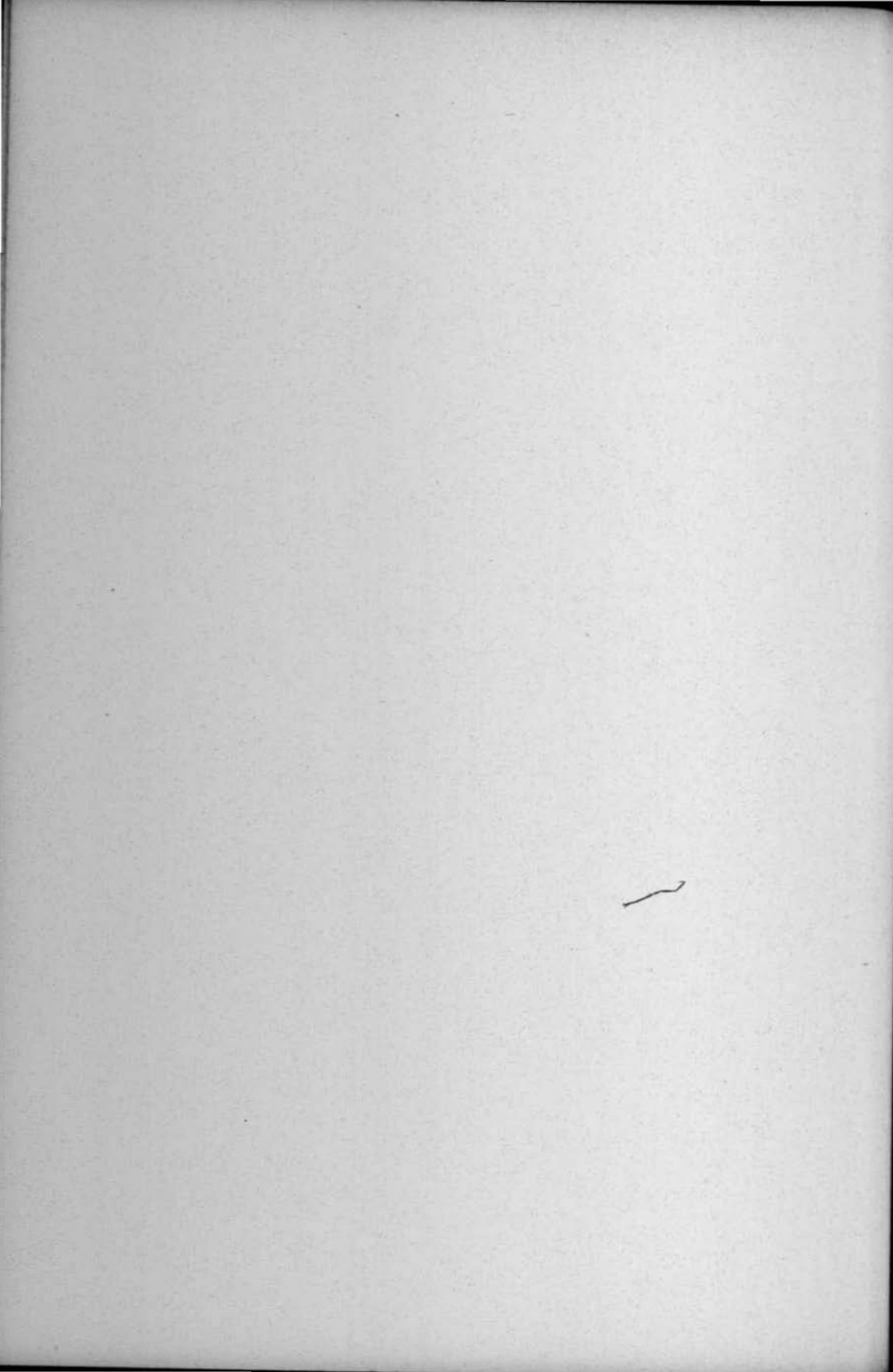
It is my opinion that Section 6059, Compiled General Laws of Florida, 1932, Supplement, would apply to stockholders of a trust company doing a strictly trust business and not engaged in the banking business.



CHAPTER V

INTOXICATING LIQUORS

Section 1. In General	313
Section 2. Beverage Act	333
Section 3. Alcohol	337



CHAPTER V

INTOXICATING LIQUORS

SECTION 1

IN GENERAL

July 28, 1933

COUNTIES MAINTAIN STATUS IN EFFECT DECEMBER 31, 1918
UNLESS ELECTION HELD

Dear Sir:

I am in receipt of your letter relative to House Joint Resolution No. 83 of the 1933 Legislature proposing amendment to Article XIX of the Constitution of Florida, relating to prohibition.

Section 2 of said resolution contains the following:

"All laws relating to intoxicating liquors, wine and beer which were in effect on December 31, 1918, unless changed by the Legislature by laws, expressly made, effective concurrently with this amendment, shall as so changed become effective with this Article and shall so remain until thereafter changed by the Legislature."

The effect of said provision is to make effective Chapter 7733, Laws of Florida, Acts of 1918, the liquor package law, which was effective before December 31, 1918.

Chapter 7736, Laws of Florida, Acts of 1918, making effective the Nineteenth Article of the State Constitution as amended at the General Election held Nov. 5, 1918, did not become effective until January 1, 1919, and would not be among the effective laws referred to in the above Resolution.

Section 3 of said Resolution contains the following language:

"Until changed by elections called under this Article, the status of all territory in the State of Florida as to whether the sale is permitted or prohibited shall be the same as it was on December 31, 1918, provided that at the General Election in 1934 or at any time within two years after this Article becomes effective the Board of County Commissioners of any county shall, upon the application of five per cent of the registered voters of the county, call and provide for an election to decide whether the sale shall be prohibited in such county, said election to be otherwise as provided in Article I hereof."

The effect of such provision is to maintain the status of all counties as to sales of intoxicating liquors therein as existing on December 31, 1918, unless changed by an election..

INTOXICATING LIQUORS IN GENERAL

September 16, 1933

LAW PREVAILING AS TO PROOF OF INTOXICATING QUALITIES

Dear Sir:

Replying to your letter of September 11th, permit me to say Chapter 15863, Acts of 1933, repeals Section 7614, Compiled General Laws, 5470, Revised General Statutes of 1920, provides the method by which intoxicating liquors may be proven.

In the case of *Emanuel Nussbaumer vs State*, 54 Fla. 87, 44 So. 712, the Supreme Court said:

"In order to establish the fact that the liquor sold is wine, that is, the fermented juice of the grape, the formula under which the liquor is made, its composition and the amount of alcohol it contains as shown by the chemical analysis of it, may be proved by an expert, or this fact may be established by non-expert testimony, as that the wine sold was intoxicating. The fact that the liquor sold was intoxicating may be shown by any competent evidence whether direct or circumstantial."

The opinion from which we have quoted was rendered in 1907, several years prior to the enactment of either Chapter 7736, Acts of 1918, or Chapter 9265, Acts of 1923, which appear in the Compiled General Laws of 1927 as Section 7614.

The Chapters and Section above referred to prescribed the method of providing alcoholic content. The Chapters and Section were repealed by the Act of 1933.

It therefore seems to me that in prosecutions for violation of the laws prohibiting the sale of liquors containing more than 3.2% of alcohol, the proof of the intoxicating qualities of the liquor could be proven under the rule laid down by the Supreme Court in the case cited above, and in other cases decided prior to the enactment of Chapter 7736 of 1918, and Chapter 9265, Acts of 1923.

August 16, 1934

IMPORTATION, TRANSPORTATION AND POSSESSION UNLAWFUL
IN DRY TERRITORY*Dear Sir:*

I am in receipt of your letter of the 15th instant, enclosing communication to you, under date of the 15th instant from Mr. Earle G. Moore, Hillsboro Hotel, Tampa, Florida, the body of which reads as follows:

"I represent a client who holds Government Permit A. B. I. No. 10 who wants to use the Port of Tampa as a point for importing wines, liquors and alcoholic beverages.

"These wines, liquors, etc., will be addressed to him care of the Collector of Customs in Tampa in bond and will remain in bond in the

INTOXICATING LIQUORS IN GENERAL

custody of the Collector of Customs at all times. The Collector of Customs will be furnished shipping instructions on these goods shipping them to points in wet States where they will be sold. At no time will the goods be in the possession of my client or be sold and delivered to any point in Florida, but will remain in the custody of the Collector of Customs in bond, who will deliver them to their destination in a wet State.

"I would like to know if handling this matter in this way conflicts with any of the statutes of Florida and would appreciate an early reply."

In reply your attention is called to Amendment 21 of the Federal Constitution, Section 1 of which repeals the Eighteenth Amendment and Section 2 of which reads as follows:

"The transportation or importation into any State, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Your attention is further called to 27 U. S. C. A. 122, reading as follows:

"Shipment into states having dry laws; prohibition. The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

Your attention is further called to Sections 7601 and 7603, Compiled General Laws of Florida, 1927, reading as follows:

7601. "It shall be unlawful for any person, association of persons, or corporation, or any agent or employee of any person, association of persons or corporation, to manufacture, sell, barter or exchange, or cause to be manufactured, sold, bartered, or exchanged, or in anywise, to be concerned in the manufacture, sale, barter or exchange, or to transport, cause to be transported, or in anywise be concerned in the transportation, from any point in this State to any other point in this State, or to any point in this State from any point without the State, whether in another

INTOXICATING LIQUORS IN GENERAL

State, Territory, possession of the United States or foreign Country, any alcoholic or intoxicating liquors or beverages, whether spirituous, vinous or malt, except as in hereinafter provided."

7603. "It shall be unlawful for any person, association of persons, or corporation, or any agent or employee of any person, association of persons, or corporation, to have in his, her, their or its possession, custody or control in this State, any alcoholic or intoxicating liquors or beverages, except as in hereinafter provided."

In view of the above, it is my opinion that the importation of intoxicating liquors into Florida and the handling of same as suggested by Mr. Moore in his letter would not be authorized under the law.

October 11, 1934.

SALE OF CERTAIN BEVERAGES CONTAINING MORE THAN
3.2% ALCOHOL

Dear Sir:

I am in receipt of your letter of the 6th inst., making inquiry if 6% ale can be sold under the present beer license in the event of the adoption of the amendment to Article XIX of the State Constitution at the General Election of 1934.

Your attention is called to Section 2 of the proposed Amendment containing the following language:

"All laws relating to intoxicating liquors, wines and beer which were in effect on December 31, 1918, unless changed by the Legislature by laws expressly made, effective concurrently with this amendment, shall as so changed become effective with this Article and shall so remain until thereafter changed by the Legislature."

Your attention is further called to that part of Section 3 of the proposed Amendment reading as follows:

"Until changed by elections called under this Article, the status of all territory in the State of Florida as to whether the sale is permitted or prohibited shall be the same as it was on December 31, 1918 * * *."

Your attention is further called to the title of Chapter 15884, Laws of Florida, Acts of 1933, containing the following language:

"AN ACT Regulating and Controlling the Manufacture, Transportation and Sale of Malt and Vinous Beverages Commonly Known as Beer, Porter, Ale, Wine, or Fruit Juices, and Such Similar Beverages As Are Not Prohibited by the Laws of this State; Authorizing the Governor of the State of Florida to

INTOXICATING LIQUORS IN GENERAL

Appoint Supervisors to Supervise the Business of Persons, Associations of Persons, or Corporations Engaged in Such Business and Prescribing the Powers and Duties of Said Supervisors; Prescribing a Tax to Be Levied and Assessed Upon All Such Beverages Manufactured or Sold Within This State and Prescribing the Method of Assessing and Collecting Said Tax and the Distribution Thereof; Prescribing License Fees and the Collection and Distribution Thereof; Appropriating Funds Necessary for the Enforcement Thereof; and Prescribing Penalties for the Violation of the Provisions of This Act, and Providing for Referendum."

Your attention is further called to the first paragraph of Section 1 of said Act, reading as follows:

"That any person, association of persons, or corporation before engaging in the business of manufacturing, selling, bartering or exchanging or in anywise dealing in or causing or being concerned in the manufacture, sale, barter, or exchange of any malt or vinous beverages commonly known as beer, porter, ale, wine or fruit juices, containing more than one-half of one per centum of alcohol, as are not prohibited by the laws of this State, shall, before engaging in any business, file under oath with the Tax Collector of the County in which the place of business of each such person, association of persons, or corporation shall be located, a written or printed application for a license to conduct such a business, said application to be made upon forms to be provided to the Tax Collector by the Comptroller."

In view of the above, it is my opinion that in the event of the adoption at the General Election in 1934 of said Amendment, beer, porter, ale, wine or fruit juices and similar beverages containing more than 3 2/10% alcohol may be sold, under the beverage license provided for in Chapter 15884 of 1933, in those counties in which the sale was not prohibited under the status in effect on December 31, 1918, and also in those counties in which the sale may not be prohibited by virtue of elections that may be held under the proposed amendment. This opinion, of course, does not apply to counties which were dry on December 31, 1918, or which may be dry by virtue of elections which may be held under the proposed amendment. In such dry counties no such beverages may be sold which contain more than 3 2/10% alcohol. This letter is not to be construed as applying to intoxicating liquors other than the particular beverages herein mentioned.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INTOXICATING LIQUORS IN GENERAL

October 25, 1934.

PROPOSED CONSTITUTIONAL AMENDMENT TO ARTICLE XIX—
TIME OF TAKING EFFECT

Dear Sir:

This is in response to your communication of October 22, 1934, wherein you inquire as to the exact time when, if approved by a majority of those voting on the question at the coming General Election, November 8, 1934, the proposed amendment to Article XIX of the State Constitution will become effective.

By Section 4 of the said proposed amendment, it is provided that it shall become effective immediately upon its adoption and the repeal of Article XVIII of the Amendment to the Constitution of the United States.

As we all know, the Eighteenth Amendment to the Federal Constitution has been repealed, so that this amendment will become effective immediately upon its adoption.

The question then arises as to when it is actually adopted.

Section 1 of Article XVII of the Constitution of Florida provides in part:

"If a majority of the electors voting upon the amendments, at such elections shall adopt the amendments the same shall become a part of the Constitution."

Since 1895 the Supreme Court of Florida has consistently adhered to its interpretation of this Constitutional provision regarding amendments, as stated in the advisory opinion to Governor Mitchell, as reported in 34 Fla. 500, 16 So. 410. It has been reaffirmed in the following cases:

Correlis vs. State, 78 Fla. 44, 32 So. 601; Seisol vs. Moran, 80 Fla. 98, 85 So. 348; Perry vs. Consolidated Special Tax School District No. 4, 89 Fla. 271, 103 So. 639, 641; Porter vs. First National Bank of Panama City, 96 Fla. 740, 119 So. 130, 119 So. 519;

As stated by our Supreme Court in the Perry case, *Supra*, this interpretation is as follows:

"Under the provisions of Section 1 of Article 17 of the State Constitution, any amendment to that instrument that is proposed by the Legislature and approved and adopted by a majority of the votes of the electors of the State voting thereon, in compliance with the requirements of said Section, takes effect and becomes operative as part of the Constitution *co instanti* upon its receiving the approving majority of the votes of the electors voting thereon."

It is also significant that the provisions of the statutes regarding a canvass of the results of General Elections, both as to the county

INTOXICATING LIQUORS IN GENERAL

canvassing board, as well as the Board of State Canvassers, say nothing regarding the canvass of returns on constitutional amendments submitted, nor is there any statutory provision regarding formal proclamation thereof. (See Sections 343-345 and 348-352, C. G. L., 1927). While it has been the custom for many years for the county canvassing board and the State Board of Canvassers to so canvass the results and certify thereto, such custom in no manner affects or delays the taking effect of such proposed amendments.

The same fundamental rule has been followed by the Supreme Court of the United States regarding the amendments to the Federal Constitution. Thus it was held that the Eighteenth Amendment, which was ratified by the last State constituting the three-fourth majority necessary on January 16, 1919, (Sen. Doc., No. 169, 66th Cong. 2nd Sess.) but which was not formally proclaimed by the Secretary of State until January 29, 1919, (40 Stat. 1941) became a part of the Constitution on January 16 and not January 29, 1919. See:

Dillon vs. Gloss, 236 U. S. 368; 65 L. Ed. 924, 41 Sup. Ct. Rep 510;

Druggan vs. Anderson, 269 U. S. 36, 70 L. Ed. 151, 46 Sup. Ct. Rep. 14.

It is, therefore, my opinion that if a majority of the voters, voting on said proposed amendment to Article XIX, vote in favor thereof, it will at that instant become a part of the Constitution of Florida and effective without awaiting the certificate of any canvassing Board or proclamation of any executive officer.

November 2, 1934.

PERMITS AND LICENSE REQUIRED

Dear Sir:

I am in receipt of your letter of the 31st ultimo, making inquiry if it will be necessary to secure the required petition of qualified electors under the old law to open a retail liquor dealer's store under the package law.

In reply I beg to say that in the event of the adoption of the amendment to Article XIX of the State Constitution it will be necessary for all liquor dealers handling intoxicating liquor of more than three point two alcohol, other than beer and wine and similar beverages, to secure a permit from the County Commissioners and pay the license required under the old law.

As to method of procuring permit I am enclosing copy of my letter of this date to Hon. J. A. Cormier on said subject.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INTOXICATING LIQUORS IN GENERAL

November 2, 1934.

APPLICATION OF LAW IN RE OBTAINING PERMITS AND LICENSE

Dear Sir:

I have your favor of November 1st, which reads as follows, to-wit:

"Inasmuch as Chapter 7290 of the General Laws of 1917 was declared invalid by the Supreme Court in the case of *State ex rel Church versus Yeates et al*, 74 Fla. 509, 77 So. 262, I would appreciate an opinion as to the method and procedure of obtaining a license to sell intoxicating liquors, should the Nineteenth Amendment be repealed."

In reply to your inquiry, permit me to say:

House Joint Resolution No. 83, proposing an Amendment to Article 19 of the Constitution of Florida, relating to Prohibition, contains the following provision:

"All laws relating to intoxicating liquors, wines, and beer, which were in effect on December 31st, 1918, unless changed by laws expressly made, effective concurrently with this amendment, shall as so changed become effective with this article, and shall so remain until thereafter changed by the Legislature."

Relative to the applicable laws pertaining to the procurement of permits to sell intoxicating liquors, if and when the amendment to Article 19 is adopted, permit me to say:

The Supreme Court in the case cited held Chapter 7290, Acts of 1917, to be invalid. The Chapter referred to was an Act to amend Sections 1219 and 1220 of the General Statutes of Florida, relating to requisites of application for permit to sell liquors, wines or beers, and the publication thereof, and repealing Sections 1222, 1223, and 1224 of the General Statutes of Florida, and providing for Remonstrance to petitions.

When the Supreme Court held Chapter 7290, Acts of 1917, to be invalid, the result was to leave the sections of the general laws referred to in full force and effect, and there having been no other act of the Legislature subsequent to Chapter 7290, Acts of 1917, which amended or repealed Sections 1219-20, 1222-24 of the General Laws, it appears that said Sections were in effect on December 31st, 1918; therefore, it is my opinion that if and when the Amendment to Article 19 of the Constitution of the State of Florida is adopted, the sections above mentioned being in effect on December 31, 1918, would be the governing law covering applications for permits to sell intoxicating liquors. The sections referred to appear in the Florida Compiled Laws of 1914, and have not been published in subsequent compilations because of the general impression that Chapter 7290, Acts of 1917, amended 1219 and 1220, and repealed Sections 1222, 1223 and 1224 of the General Statutes, which it did until the Supreme Court in 1917 held said Chapter to be invalid.

It appears that if and when the amendment to Article 19 of the Constitution is adopted, application may be made for permit to sell intoxicating liquors under two sections of the Florida Compiled Laws of

INTOXICATING LIQUORS IN GENERAL

1914, namely, Section 1218 or Section 1222. The first section appears to apply to election districts, where a majority of the registered voters of an election district have not petitioned for a permit to sell intoxicating liquors since October 1, 1897, and the latter section 1222 appears to apply where a majority of the registered voters have petitioned for the sale since October 1, 1897.

Under the provisions of Section 1222, Florida Compiled Laws of 1914, the county commissioners may grant a permit for the sale of intoxicating liquors without a petition from a majority of the registered voters, if a majority of the registered voters of an election district have petitioned for the sale thereof since October 1, 1897; whereas, if application is made to sell in an election district where a majority of the voters have not since October 1, 1897, petitioned for the sale of intoxicating liquors, then the application would have to be made under the provisions of Sections 1218 and 1219, Compiled Laws of 1914, which requires the application to be signed by a majority of the registered voters of the election district.

November 6, 1934.

WAREHOUSE RECEIPTS NOT CLASSIFIED AS SECURITIES UNDER
CHAPTER 14899 ACTS 1931

Dear Sir:

I am in receipt of your letter of the 22nd ultimo, making inquiry as to whether or not whiskey warehouse receipts are "securities" under the Florida Securities Act.

In reply I beg to refer you to Paragraph (1) of Section 1, Chapter 14899, Laws of Florida, Acts of 1931, defining securities as follows:

"(1) 'Security' shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, or right to subscribe to any of the foregoing, certificates of interest in a profit-sharing agreement, certificate of interest in an oil, gas, or mining lease, collateral trust certificate, pre-organization certificate, pre-organization subscription, any transferable share, investment contract, or beneficial interest in title to property, profits or earnings or any other instrument commonly known as a security; including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security."

Your attention is further called to the pamphlet attached to papers accompanying your letter, which defines warehouse receipts as follows:

"A transferable instrument in writing evidencing ownership of specific, tangible property stored in a bonded warehouse."

Your attention is further called to a specimen copy of warehouse receipt among the papers attached to your letter, which indicates that a

INTOXICATING LIQUORS IN GENERAL

whiskey warehouse receipt is for a particular barrel or package with serial number indicated.

Your attention is further called to Vol. 4, Words and Phrases (3d. Series,) 1239, defining a warehouse receipt as follows:

"An instrument on its face showing that the signer has in his possession designated goods of another for storage and obligating him to deliver the same to a specified person, or to his order, or bearer, on return of the instrument."

Under the above definition, I do not think that whiskey warehouse receipts are "securities" under the above quoted statute.

November 14, 1934.

DRUG STORES CONFINED TO SALE OF WINE FOR SACRAMENTAL PURPOSES UNLESS LICENSED UNDER CHAPTER 15884, LAWS 1933

Dear Sir:

I am in receipt of your letter of the 31st ultimo, relative to intoxicating liquors, the first paragraph of which reads as follows:

"If drug stores operating under the provisions of Sections 7605, 7606 and 7607, C. G. S., 1927, are exempt from the licenses and excise tax provided for in Chapter 15884, should not they be confined to sales of wines for sacramental purposes only?"

Since receipt of your letter, the proposed amendment to Article XIX of the State Constitution, relating to intoxicating liquors, appears to have been adopted at the General Election held on the 6th instant. Assuming that said proposed amendment has been adopted, only those laws relating to intoxicating liquors in effect on December 31, 1918, are not effective. Sections 7605, 7606 and 7607, Compiled General Laws of Florida 1927, are a part of Chapter 7736, Acts of the Extra Session of 1918, which Chapter was not in effect until January 1, 1919. The statute relating to the sale by druggists of alcohol or wine for sacramental purposes is Section 3 of Chapter 7288 of 1917.

Answering your inquiry, I beg to say in my opinion sales of wines by druggists should be confined to sales of wines for sacramental purpose only, unless they are duly licensed under Chapter 15884, Acts of 1933.

November 14, 1934.

SELLER OF WAREHOUSE RECEIPTS NOT REQUIRED TO BUY LICENSE

Dear Sir:

This is in response to your letter of October 31st, the second paragraph of which reads as follows:

INTOXICATING LIQUORS IN GENERAL

"If Florida votes 'wet' next Tuesday, will the seller of warehouse receipts for liquor stored in or out of Florida be required to purchase a license under 'Those laws pertaining to intoxicating liquor that were in effect December 31, 1918'?"

It appears that the proposed amendment to Article 19 of the State Constitution was adopted at the General Election held on November 6, 1934. Assuming this to be true, the laws which were in effect December 31, 1918, are now operative.

It is my opinion that the sale of a warehouse receipt evidencing the storage of liquors in such warehouse is not the sale of whiskey within the meaning of these laws. The sale prohibited or regulated by such laws contemplates the actual physical delivery of the liquor itself, and I do not believe that we can apply any theory of constructive or symbolic delivery contemplated in the sale of a warehouse receipt.

I therefore advise that persons selling whiskey warehouse receipts need not secure a permit and license under the laws of Florida.

November 20, 1934.

DRUG STORES REQUIRED TO PROCURE LICENSE IN
ORDER TO SELL

Dear Sir:

Answering your inquiry of the 27th inst., I beg to say in my opinion under statutes effective December 31, 1918, drug stores are not permitted, under their privilege of selling alcohol on prescriptions, to stock up and sell whiskey, gin, wines and other intoxicating liquors without procuring a permit and license as other dealers in intoxicating liquors.

November 21, 1934.

MANUFACTURE IN DRY COUNTIES PROHIBITED

Dear Sir:

This is in response to your communication of the 17th instant, and in reply thereto, I beg to advise that under Section 2 of Chapter 7283, Laws of Florida, Acts of 1917, it is provided:

"That it shall be unlawful for any person, firm, association of persons, or corporations, in any county or election precinct in this State, where the sale of intoxicating liquors shall be now or may hereafter be prohibited by laws of this State, to manufacture, sell, offer for sale, keep for sale, barter, * * * or otherwise dispose of any of the prohibited liquors and beverages described in Section One of this Act, or any of them, in any quantity at any time. * * *"

The constitutionality of this statute and its interpretation and application were determined by the Supreme Court in the case of *Fine vs. Moran*, 74 Fla. 417, 77 So. 533.

INTOXICATING LIQUORS IN GENERAL

Under this section and decision, it is my opinion that intoxicating wines (that is, wines in excess of 3.2% alcoholic content by weight) may not be manufactured for commercial purposes in a county voting against the sale of intoxicating liquors, wines or beer.

November 21, 1934.

**WINE MANUFACTURERS LICENSED UNDER CHAPTER 15884,
LAWS 1933**

Dear Sir:

Answering your communication of November 16, 1934, I beg to advise that it is my opinion that wine manufacturers should be governed by the licensing provisions of Chapter 15884, Laws of Florida, Acts of 1933.

November 26, 1934.

**LICENSE ISSUED UNDER PROVISIONS OF SECTION 1222 ET SEQ.
GENERAL STATUTES 1906**

Dear Sir:

This acknowledges yours of the 19th instant, regarding intoxicating liquors. Procedure under Sections 1222 to 1227, General Statutes 1906. Effect of Chapter 7290, Laws of Florida, Acts of 1917.

I refer you to the case of State ex rel Church vs. Yeates, 77 So. 262, which held Chapter 7290, Laws of Florida, Acts of 1917, unconstitutional and void, and held that a writ of mandamus should issue upon compliance with Sections 1222 et seq., General Statutes of Florida 1906, to require the issuance of a license thereunder. This was the basis for our ruling in opinion to Mr. Lee.

Regarding the provision of present Article 19 of the Constitution, as to the laws now in effect, until the Courts decide otherwise, we are making our ruling upon the basis that it was legally competent for the people of Florida by constitutional amendment to in effect revive or re-enact all laws in effect December 31, 1918, concerning this subject.

November 27, 1934.

**LICENSE REQUIRED OF CORPORATIONS MAINTAINING
WAREHOUSES FOR DISTRIBUTION**

Dear Sir:

This acknowledges your inquiry concerning the following situation:

A certain corporation, evidently incorporated under the laws of another State, desires to maintain a warehouse for the storage of intoxicating liquor in Duval County, Florida; such corporation will not maintain any sales office in Florida, and the Florida warehouse will be under the jurisdiction of a sales office in New York. The corporation will

INTOXICATING LIQUORS IN GENERAL

probably use several salesmen in this State operating out of New York, and who will have no headquarters in Florida. Orders will evidently be accepted in New York, and then distribution will be made from the warehouse in Duval County.

Inquiry is made as to whether or not under existing laws such corporation need take out a liquor dealer's license in Duval County; and whether or not it would be entitled by such license to warehouse its stock in other wet counties throughout the State, without procuring separate licenses in each of such counties where a warehouse may be maintained.

It is my opinion that under existing laws, the sale contemplated by the statutes requiring a license before engaging in such transaction is a sale which contemplates the actual physical delivery of the liquor; and that therefore, under the facts above outlined, such corporation would have to take out a license pursuant to Section 31 of Chapter 6421, Laws of Florida, Acts of 1913, in Duval County, and in every other wet county where a warehouse is maintained for the purpose of actually distributing or dispensing intoxicating liquors.

November 27, 1934.

SHIPMENT INTO WET COUNTIES ALLOWED

Dear Sir:

This acknowledges yours of the 24th, in which you advise that the executrix of a certain estate has among the assets of such estate shares of stock in a distilleries corporation; that in 1933 such corporation declared a dividend to its stockholders in whiskey, allocating to each stockholder a certain amount, and that upon such allocation the said executrix became entitled to three cases of such liquor.

You ask whether or not the executrix may now surrender the warehouse receipts evidencing her title to such liquor, and have the same sent by express to her in Dade County, Florida, without violating any of the existing laws of this State.

It is my opinion that under the existing laws, such shipment may take place as outlined.

November 28, 1934.

POSSESSION IN DRY TERRITORY FOR PERSONAL USE LAWFUL

Dear Sir:

This acknowledges receipt of yours of the 26th, and in response thereto I beg to advise that under the laws in effect December 31, 1918, the mere possession of intoxicating liquor is not illegal in so-called dry territories, when such possession is for the use of the individual himself.

Pursuant to the same laws, it is made unlawful for any person in a dry county to furnish at public places or to dispose of any quantity of

INTOXICATING LIQUORS IN GENERAL

intoxicating liquor, except as the same may be done in social serving of such liquors in private residences in ordinary social intercourse.

December 5, 1934.

LOCAL OPTION ELECTION—PAYMENT OF POLL TAX PREREQUISITE TO VOTING—REGISTRATION BOOK FURNISHED TO INSPECTORS BY SUPERVISOR

Dear Sir:

I am in receipt of your letter of the 4th inst., advising that a special local option liquor election has been called for January 15, 1935, in your county under the provisions of Article XIX of the State Constitution amended at the General Election on November 6, 1934. Your first inquiry is whether or not voters are required to pay 1934 poll tax before they are qualified to vote in said election. You make further inquiry if you can furnish the Clerks and Inspectors of election with a qualified list of voters rather than furnishing them with a copy of the registration books.

In reply to your first inquiry with reference to the payment of 1934 poll tax as a qualification for voters in said election to be held on January 15, 1935, I refer you to Sections 1 and 3 of Article XIX of the State Constitution as recently amended which provides with reference to such elections as follows: "Which election shall be conducted in the manner prescribed by law for holding general elections." Your attention is further called to Sections 248 and 302, Compiled General Laws of Florida, 1927, which provide that no person shall be permitted to vote at an election who shall have failed to pay his or her poll tax for the two years next preceding the year in which such election shall be held.

In view of the above, it is my opinion that the payment of 1933 and 1934 taxes is necessary to qualify one to vote in such an election held in the year 1925.

Answering your second inquiry, I refer you to Section 298, Compiled General Laws of Florida, 1927, which requires the Supervisor of Registration to furnish the Inspectors of Election of each voting place in each election district with one of the registration books for such district, the Supervisor retaining in his office the other copy or duplicate of such book that he has marked "office copy." In view of this statute, it appears that a copy of the registration books must be furnished to the Inspectors of such election and that a separate list of qualified voters will not comply with the above mentioned statute.

December 7, 1934.

SALE IN WET COUNTIES OF MALT OR VINOUS BEVERAGES IN EXCESS OF 3.2% ALCOHOL LAWFUL

Dear Sir:

This acknowledges yours of December 5th regarding the above subject.

INTOXICATING LIQUORS IN GENERAL

This basis for my ruling under date of November 15, 1934, addressed to the Honorable J. M. Lee, Comptroller, was that provision in Section 1 of said Chapter 15884, providing for the licensing under the said Act of persons engaged in the sale of malt or vinous beverages commonly known as beer, porter, ale, wine, or fruit juices, containing more than one-half of one per centum of alcohol, *as are not prohibited by the laws of this State*. The sale of such beverages in excess of 3.2% alcohol by weight are not prohibited by the laws of this State in those counties authorizing by local option elections the sale of such liquors.

You will note, however, that the opinion under date of November 15, 1934, does not authorize the sale of *spirituous or distilled* liquors by a licensee under the said Act of 1933.

Thus you will see the distinction is made between malt or vinous beverages and spirituous or distilled liquors.

December 7, 1934.

LAWFUL FOR HOSPITALS TO RECEIVE AND POSSESS FOR USE OF PATIENTS

Dear Sir:

Answering your inquiry of the 6th instant, I beg to say under the provisions of Section 1, Chapter 7285, Laws of Florida, Acts of 1917, it is lawful for bona fide hospitals to receive and possess alcohol and other intoxicating liquors in so called "dry" counties, and it is also lawful for common or other carriers to ship or transport such alcohol or intoxicating liquors to such hospitals provided such consignee or addressee or his or its duly authorized agent shall, at the time of the delivery to him of said alcohol or liquors, make an affidavit and deliver to such common or other carrier that such alcohol or liquors are ordered for use of bona fide patients of such hospital and that said alcohol or liquors will not be used for any other purpose.

December 7, 1934

SALE ON CARS OPERATED BY PULLMAN COMPANY UNLAWFUL

Dear Sir:

This is in response to your oral inquiry concerning the laws of Florida with reference to the sale of intoxicating liquors as the same are applicable to the situation of the Pullman Company in selling and dispensing such liquors on their club, buffet, or lounge cars.

By Sections 5 and 8 of Chapter 5597, Laws of Florida, Acts of 1907, (which was a general occupational license tax statute), provision was made for the licensing of dealers and makers of intoxicating liquors, and in the said Section 8 it was provided as follows:

"That dealers in spirituous, vinous, or malt liquors, which carry on or conduct business on any boat, vessel or railroad car in this State, shall be required to take out one State and county

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INTOXICATING LIQUORS IN GENERAL

license for each boat, or vessel, or railroad car in which their business is carried on, which shall be taken out in the county where the principal business of each boat, vessel, or railroad car is located, and which license shall authorize them to sell liquor anywhere along its line of travel."

The quoted matter from said Section 8 appears, together with proviso following, as Section 596L, Florida Compiled Laws of 1914.

Chapter 5896, Laws of Florida, Acts of 1909, prohibited the drinking of intoxicating liquors on railroad trains.

Chapter 6421, Laws of Florida, Acts of 1913, which also was a general occupational license statute and repealed all laws in conflict therewith, provides in Section 31 for the licensing of dealers in intoxicating liquors, and requires the license tax of \$1,000 in each county and for each place of business, and each bar or place where liquor is sold to customers is constituted a separate place of business under this Act and requires a separate license.

This Act of 1913 is the one appearing as Section 596kkkk, Florida Compiled Laws of 1914. No separate provision is made with reference to railway cars.

It is very possible that the Legislature considered the Act of 1909 prohibiting the drinking on railway cars, as impliedly repealing the former provision of the statute of 1907.

It is also possible that the general revision of the statute in 1913 impliedly repealed the provision of the Act of 1907, but I do not deem it necessary to decide that question, because assuming that the old Act of 1907 is still in existence, the Act of 1909 is also effective, prohibiting the drinking upon railway cars, and furthermore, even under the Act of 1907, it will be necessary to secure a separate \$1,000 license upon each car in which such drinks are sold, and the dispensing of the same would have to comply with all laws with reference to dealers generally, including the hours during which such sales may be made, the prohibition against such sales on Sunday, and in quantities of not less than one-half of one pint sold at a single time. Also, no such sales could take place in dry counties.

It is my understanding from our conference had that such regulations make prohibitive any sale upon such railway cars, and therefore, in view of the fact that it is my opinion such regulations and restrictions do apply, it is not necessary to determine the question of implied repeal.

December 8, 1934

SHIPMENT INTO WET COUNTY PERMITTED; SHIPMENT INTO DRY
COUNTY LIMITED

Dear Sir:

I am in receipt of your letter of the 4th inst., making inquiry as to shipment of whiskey into the State of Florida to an individual who is the owner of a warehouse receipt covering whiskey stored in your ware-

INTOXICATING LIQUORS IN GENERAL

house. You also state that the warehouse receipt in question covers dividend whiskey and was issued by your company to one of its stockholders in Florida and that the whiskey is to be used for personal use only.

In reply I beg to say shipment may be made to said party if he is in a so-called "wet" county and precinct. If, however, he is in a so-called "dry" county or a "dry" precinct in a "wet" county, shipment could not be made to this party except under the provisions of paragraph 2, Section 5, Chapter 7284, Laws of Florida, Acts of 1917, providing only one quart of intoxicating liquor or wine and not exceeding six quarts of beer or malt, where said beer or malt does not contain more than five per cent. of alcohol, may be shipped during any period of 30 consecutive days for the use of himself, or for the use of his own family residing with him.

December 10, 1934

SALE IN WET COUNTY IN PRECINCTS VOTING DRY PERMITTED

Dear Sir:

This is in response to your communication of December 6, 1934, wherein you inquire whether or not liquor may be sold in an election precinct which at a local option election votes dry, when in such local option election the county as a whole votes in favor of the sale of intoxicating liquors.

It is my opinion that under present Article 19, which places the question of permitting the sale on a countywide basis and omits that provision for dry precincts in old Article 19 of the Constitution of 1885, before its amendment by the prohibition article 19, if the county votes in favor of the sale of intoxicating liquors, such sale may take place in any election precinct in the county, regardless of whether or not that precinct has voted in favor of or against such sale.

December 11, 1934

FUND TO WHICH LICENSE TAX MONEY SHOULD BE DISTRIBUTED

Dear Sir:

This acknowledges yours of the 7th inst., and I beg to advise that license tax monies derived from the occupational license tax imposed by Chapter 6421, Laws of Florida, Acts of 1913, on dealers in intoxicating liquors, should be distributed by both the State and the County to the same funds to which are distributed other occupational license taxes.

BIENNIAL REPORT OF THE TATORNEY GENERAL
INTOXICATING LIQUORS IN GENERAL

December 14, 1934

ONLY ONE STATE AND COUNTY LICENSE REQUIRED FOR DIS-
TRIBUTORS UNDER CHAPTER 15884 LAWS 1933; LICENSE
FOR EACH PRECINCT REQUIRED UNDER LAWS
IN EFFECT DECEMBER 31, 1918

Dear Sir:

In your letter of the 13th instant you request my opinion as to whether a licensed wholesale liquor distributor in Miami could legally make sales of liquor direct from his truck to legally licensed retail liquor dealers in Key West.

The answer depends on the kind of liquor sold. If such sales are confined to malt and/or vinous beverages as defined in Chapter 15884, Laws of Florida, Acts of 1933, the distributor is liable for only one State and County License for each wholesale establishment or branch operated or conducted in the State. So if the distributor has only one wholesale establishment and that is located in Miami, and he sells only malt or vinous beverages and is properly licensed therefor in Dade County, he is not required to be further licensed, or for any further license fee, although his operations may extend beyond Dade County. This is true because of the provisions of Section 5-(b) of Chapter 15884, which provides as follows:

"Each distributor or wholesale dealer authorized to do business under this Act shall pay a State License fee of Two Hundred (\$200.00) Dollars for each and every wholesale establishment or branch which he may operate or conduct in the State of Florida."

Also Section 9 of said Act, which reads as follows:

"Each county in the State is hereby authorized to levy and collect an additional license tax upon each manufacturer, distributor and vendor having a place of business within said county not to exceed fifty per cent (50%) of the State license tax herein provided."

If the liquors referred to in your inquiry be other than malt or vinous beverages, as defined in Chapter 15884, then the law in effect December 31st 1918, applies, and before any sale can take place in any election precinct in the State the seller must be duly licensed in such election precinct and must pay the license tax required under the law in force December 31st, 1918. The law in effect December 31st, 1918, made no classification of or distinction between those engaged in the sale of liquors such as is made in Chapter 15884. Therefore, a distributor licensed under Chapter 15884 would not authorize such licensee to sell at any place in the State anything other than malt or vinuous beverages as defined in said Chapter 15884.

INTOXICATING LIQUORS IN GENERAL

December 20, 1934.

MANUFACTURE OF BEER ABOVE 3.2% OF ALCOHOL
PERMITTED IN WET COUNTIES*Dear Sir:*

Answering your letter of the 14th instant, I beg to say I know of no prohibition against the manufacture or sale of beer in excess of 3.2% alcohol in those counties or election precincts in the State where the sale of intoxicating liquors is not prohibited by virtue of its being in the status of a so-called "wet" county on December 31, 1918, or by virtue of elections held under the recently adopted Nineteenth Amendment to the State Constitution to determine whether such sales should be permitted. Assuming that Hillsborough County is one of the so-called "wet" counties and that you are in a precinct that did not vote against the manufacture and sale of intoxicating liquors there is no prohibition against the manufacture in such location of beer in excess of 3.2% alcohol, provided you secure the proper license and comply with the statutes of the State relating to such manufacturers.

December 29, 1934.

MALT AND VINOUS BEVERAGES—AMOUNT OF
MUNICIPAL LICENSES*Dear Sir:*

I am in receipt of your letter of the 17th instant, with reference to municipalities imposing a license tax on vendors of malt and vinous beverages under Chapter 15884, Laws of Florida, Acts of 1933.

In reply I beg to refer you to Sections 10 and 18 of said Act reading as follows:

10. "Each incorporated city or town in the State of Florida is hereby authorized to levy and collect a further and additional license tax upon each manufacturer, distributor and vendor having a place of business within the corporate limits of such city or town not to exceed fifty per cent (50%) of the State license tax herein provided.

18. "No tax on the manufacture, distribution, transportation, importation or sale of such beverages shall be imposed by way of license, excise or other-wise, by any municipality, anything in any municipal charter, special or general law to the contrary notwithstanding, except as herein expressly authorized."

Under the above quoted Sections it is clear that municipalities are prohibited from levying a license tax on vendors of malt and vinous beverages under Chapter 15884, in excess of 50% of the State license tax provided in said Act.

For your further information with regard to licenses to vendors of malt and vinous beverages, I quote you the last paragraph of a letter

INTOXICATING LIQUORS IN GENERAL

from this office to Hon. J. M. Lee, State Comptroller, under date of November 15, 1934:

"It is my opinion that licensees under Chapter 15884, Laws of Florida, Acts of 1933, commonly known as the 'Beer Law,' are authorized to proceed under their licenses as to malt or vinous beverages, commonly known as beer, porter, ale, wine, or fruit juices, containing not more than 3.2% alcohol by weight, throughout the State of Florida, regardless of whether the territory is what is commonly known as 'wet' or 'dry'; and that in the so called wet counties such licensees may proceed under their present licenses as to malt or vinous beverages commonly known as beer, porter, ale, wine, or fruit juices of any alcoholic content, without being required to procure a permit or license under the laws as they were in effect December 31, 1918."

December 31, 1934.

MANUFACTURE OF FERMENTED MALT LIQUORS IN
WET COUNTY LAWFUL

Dear Sir:

Answering your letter of the 28th instant, I beg to say I know of no prohibition against the manufacture and sale of fermented malt liquors containing more than 3.2% of alcohol in those counties or election precincts in the State where the sale of intoxicating liquors is not prohibited by virtue of its being in the status of a so-called wet county on December 31, 1918, or by virtue of elections held under the recently adopted Nineteenth Amendment to the State Constitution to determine whether such sales should be permitted. Assuming that Hillsborough County is one of the so-called wet counties and that you are located in a precinct that did not vote against the manufacture and sale of intoxicating liquors, there is no prohibition against the manufacture in such location of fermented malt liquors in excess of 3.2% alcohol provided you secure the proper license and comply with the statutes of the State relating to such manufacture.

INTOXICATING LIQUORS**SECTION 2****BEVERAGE ACT**

May 13, 1933.

SALE OF BEER TO CONSUMERS—RETAILERS MAY SELL BEER IN ANY QUANTITY, BUT MUST CONFINE HIS SALES TO CONSUMERS. HE MUST BUY FROM A

LICENSED DISTRIBUTOR

Dear Sir:

Replying to yours of May 11th, permit me to say under the provisions of paragraph "C" of Section 3 of Senate Bill No. 427 legalizing the sale of beer, it is my opinion that a drug store or any other vendor licensed to sell beer as a retailer may sell the same in any quantity either by the glassful, by the bottle or by the case but he must confine his sales to consumers, and the vendor or retailer must buy his beer from a licensed distributor or wholesaler. Of course, no one can sell, deliver or permit delivery to any person under age of 18 years.

May 15, 1933.

DEALERS, WHOLESALERS—WHOLESALE DISTRIBUTOR MAY SELL TO RETAIL DEALER ANYWHERE IN THE STATE. MAY SOLICIT ORDERS FROM RETAIL DEALERS

Dear Sir:

Replying to your letter of May 11th, permit me to say under paragraph (b) of Section 3 of Senate Bill No. 427, Acts of 1933, which legalizes the sale of beer, licensed wholesale distributors may sell to any retail vendor anywhere in the State, but they must have a fixed principal office in this State, and such distributors may maintain principal offices within or without the State.

A wholesale distributor must confine his sales to retail vendors. There does not appear to be any legal objection to a wholesale distributor soliciting orders from retailers anywhere within or without State, and making deliveries upon said orders.

May 15, 1933.

CITY ORDINANCES OF FORT LAUDERDALE REQUIRING DISTRIBUTORS TO HAVE OFFICE OF AGENT IN CITY, IS SUPERCEDED BY STATE BEVERAGE ACT

Dear Sir:

Replying to yours of May 15, in which you request my opinion upon the validity of an ordinance of the City of Fort Lauderdale, Florida, permit me to say the ordinance about which you make inquiry, as quoted in your letter reads as follows:

BEVERAGE ACT

"A distributor doing business within the City of Ft. Lauderdale shall have a fixed principal office therein, or shall have a recognized agent located within said City. The distributor shall keep a complete and accurate record showing from whom all beverages are purchased and to whom distributed, and shall make the same available to the police officers of the City."

The ordinance referred to and quoted above is clearly invalid and unenforceable, for the reason that paragraph B of Section 3 of Senate Bill No. 427, Acts of 1933, contains the following provision:

"Manufacturers and distributors may transport or cause to be transported such beverages from one place in this State to another place in this State or from any place beyond the limits of this State *into any place within this State* or from any place in this State to any place beyond this State for sale at wholesale as herein provided."

This section also contains the following provisions, to-wit:

"A distributor shall have a fixed principal office in this State *and may maintain branch offices within or without the State.*"

You will observe from the quotations above, that the State Law leaves it optional with the distributor as to whether or not he will maintain branch offices in this State; therefore, a city ordinance requiring a distributor to maintain "a fixed principal office" or a recognized agent within a particular municipality, is in conflict with the provisions of the State Law, and, therefore, is invalid and unenforceable.

May 24, 1933.

BRANCH OFFICES TAX—ROOMS LOCATED IN SAME BLOCK OR
CLOSE TO BRANCH OFFICE USED FOR STORAGE NOT
SUBJECT TO ADDITIONAL TAX

Dear Sir:

This refers to your verbal request for the opinion of this office as to what constitutes a "branch," within the meaning as contemplated by the Legislature in Section 5, Sub-section B, of Senate Bill No. 427, otherwise known as the Beer Bill.

It is my opinion that the word "branch" refers to an establishment similar to the main establishment, usually and in common practice similar in its operations and located and established for the purpose of carrying on in a definite locality, the same business, or part of the same business as is carried on by the main establishment. The "branch" being established for the purpose of facilitating the operation of the business, and in some instances reaching a territory not conveniently reached or served by the main establishment.

It seems to me that the matter of application of Section 5, above referred to, will have to be worked out along these lines, as a practical

BEVERAGE ACT

proposition. To illustrate: If a distributor has one establishment and he finds his room or facilities too small to handle the business and it is impossible for him to obtain other room except possibly another store-room or two, which may be located several doors, or in another part of the same block, or within a short distance of the main office, these additional rooms being rented and used for storage purposes, but in reality are used and operated as a part of the main establishment and not for the purpose of facilitating deliveries that could not well be served by the main establishment, and not for the purpose of reaching out and serving a territory that could not be readily served by the main establishment, then it is my opinion that such additional storage room, or rooms, would be a part of the main establishment, and would not be subject to a tax as a branch.

July 25, 1933.

TEN SUPERVISORS MAY BE APPOINTED AND AS MANY INSPECTORS AS ARE NECESSARY TO ENFORCE LAW

Dear Sir:

I am in receipt of your letter of the 22nd inst., calling my attention to the following provisions contained in Section 6 of Senate Bill No. 427 of the 1933 Legislature:

"Not more than ten supervisors shall be appointed by the Governor of the State of Florida, at a salary not to exceed \$150.00 per month, and the prevailing rate of mileage and expense."

You also enclose a list of the employees employed by the Governor in the Beverage Department created by said statute, showing a total of nineteen in the aggregate, and make inquiry if the statute allows the employment of this number.

The list submitted shows ten supervisors, as allowed by the statute, and at the salary prescribed. The other nine employees are designated by other titles.

Your attention is called to the provisions of Section 7 of said Act, reading as follows:

"The salaries and expenses of Supervisors and all other necessary costs or outlays incident to this Act or necessary for the enforcement thereof are hereby appropriated out of the license fees and taxes collected hereunder, and no other appropriation whatsoever shall be made therefor."

The above quoted Section would appear to authorize all costs necessary for the enforcement of said statute, and the employees listed other than Supervisors would appear to be authorized if necessary for such purpose.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
BEVERAGE ACT

August 10, 1933.

CONSIGNMENT—UNLAWFUL FOR DISTRIBUTOR TO DELIVER BEER
TO VENDOR ON CONSIGNMENT

Dear Sir:

Replying to your letter of August 5th, I beg to advise that Section 15 of Senate Bill 427, Acts of 1933, known as the Beer Bill, provides that no manufacturer or distributor licensed under the Act shall have any financial interest directly or indirectly in the establishment or business of any licensed vendor. The Act further provides that no licensed manufacturer or distributor shall assist any vendor by any gift or loan of money or property of any description, or by the giving of any rebates of any kind whatsoever, etc.

In view of the provisions quoted, it is by opinion that if a manufacturer or distributor delivers beverages to a vendor on consignment, it amounts, in effect, to an indirect loan, and would be a violation of Section 15 quoted above.

December 14, 1934.

MANUFACTURERS OF FRUIT JUICES SUBJECT TO LICENSE TAX
OF \$250.00

Dear Sir:

Replying to your favor of the 10th. instant, it is my opinion that manufacturers as defined in Section 3-(a) of Chapter 15884, Laws of Florida, Acts of 1933, who confine their operations to the manufacture of vinous beverages from fruit juices, as described in said Act, are liable for a State license fee or tax of \$250.00.

INTOXICATING LIQUORS

SECTION 3

ALCOHOL

December 8, 1933.

SALE OF ALCOHOL FOR MEDICINAL, SCIENTIFIC AND
MECHANICAL PURPOSES LAWFUL*Dear Sir:*

This is in response to your inquiry of even date, to which I replied by wire as follows:

"The laws of Florida provide that it is not unlawful to manufacture, sell at wholesale or transport, alcohol for medicinal, scientific and mechanical purposes. Licensed druggists may sell such alcohol for such purposes provided that if it is for medicinal purposes it must be only on prescription and if for scientific or mechanical purposes must be on affidavit of purchaser on forms prescribed by statute. Your local counsel can show you sections seven six naught five and seven six naught six, Compiled General Laws of Nineteen Twenty Seven. Official opinion signed by Attorney General will go forward by mail Monday. Robert J. Pleus, Assistant Attorney General."

The sections of the Statute mentioned in my wire are to my mind very clear in providing that it is not unlawful to manufacture, sell at wholesale or transport alcohol for medicinal, scientific and mechanical purposes. Nor is it unlawful to retail the same, provided that the sale be made only upon prescription by a licensed physician in the form provided by statute when the use is for medicinal purposes; and when the use is for scientific or mechanical purposes, such licensed druggist may retail the same upon affidavit in the form provided by the statute.

I understand that you are not interested in the matter of wine for sacramental purposes.

You may proceed under these statutes, and as a wholesaler it is not necessary for you to obtain any permit or other authorization, but such lawful wholesale distribution as you may make of alcohol shall be for only medicinal, scientific or mechanical purposes.

December 18, 1933.

MANUFACTURE, SALE, AND TRANSPORTATION OF ALCOHOL FOR
MECHANICAL, SCIENTIFIC AND MECHANICAL PURPOSES
NOT UNLAWFUL*Dear Sir:*

Replying to your favor of December 14th, in which you have propounded three questions relative to the organic and statutory laws of Florida governing the manufacture, sale and transportation of al-

ALCOHOL

cohol for medicinal, scientific and mechanical purposes, permit me to say there has been no change in the laws of this State governing the subject during the past several years.

Your first question reads as follows:

"What is the definition of the word 'alcohol' as used in the Florida statute permitting manufacture, sale and transportation of limited quantities of alcohol for medicinal, scientific and industrial purposes?"

In reply thereto, permit me to say the Legislature did not define the word alcohol, nor has the Supreme Court of this State been called upon to define the meaning thereof. Of course, as you know, there are varied definitions of the word in the dictionaries, but you have requested me to interpret the meaning of the word as it appears in the laws of Florida.

In construing the statutes, the Courts endeavor to ascertain the legislative intent from the language employed.

In construing the statutory law on the subject under consideration here, we should first look to the organic law, which we must assume in the light of reason was duly considered by the lawmakers at the time the statutes were enacted.

Section 1 of Article XIX of the Constitution of this State was the organic provision on the subject at the time the statutes under consideration here were enacted, and it reads as follows:

"The manufacture, sale, barter or exchange of all alcoholic or intoxicating liquors and beverages, whether spiritous, vinous or malt, are hereby forever prohibited in the State of Florida, except alcohol for medicinal, scientific or mechanical purposes, and wine for sacramental purposes; the sale of which alcohol and wine for the purposes aforesaid shall be regulated by law."

Pursuant to the organic provision quoted above, the Legislature enacted numerous statutes prohibiting the manufacture, sale, barter or exchange of all alcoholic or intoxicating *liquors* and *beverages*, and at the same time made what the lawmakers at that time considered adequate provision by law for the manufacture and sale at wholesale of alcohol for medical, scientific or mechanical purposes, and of wine for sacramental purposes. The governing statutes appear in the latest compilation of the laws of Florida as Sections 7605, 7606, 7607 of the Compiled General Laws of 1927, and when these statutes are considered together with the constitutional provision quoted, the only conclusion to be reached is that the words, "*alcohol for medical, scientific and mechanical purposes*," means that the manufacture, sale, barter or exchange of alcohol for medical purposes is restricted by law to *alcohol* such as has heretofore and is now recognized by the reputable members of the medical profession as necessary in compounding of medicines or in the treatment of their patients.

ALCOHOL

Alcoholic or intoxicating liquors or beverages in any form can not legally be sold in the State of Florida.

Your second question reads as follows:

"When a licensed physician writes a prescription for 'alcohol' does the prescription call for 'pure alcohol,' or does it allow purchase of alcohol mixed with water or other liquids commonly known as liquor?"

In answer to this question, I must say that I do not know whether physicians in writing prescriptions for alcohol under the law call for pure alcohol or alcohol mixed with other medicines or water. I have never seen a prescription of this kind. I do not think the question is important, because the patient usually depends upon the physician to prescribe the medicine, and most of them would prefer that he also take it.

Your third question reads as follows:

"In the purchase of alcohol for scientific and industrial purposes, is the alcohol so purchased 'denatured alcohol,' or is it pure grain alcohol?"

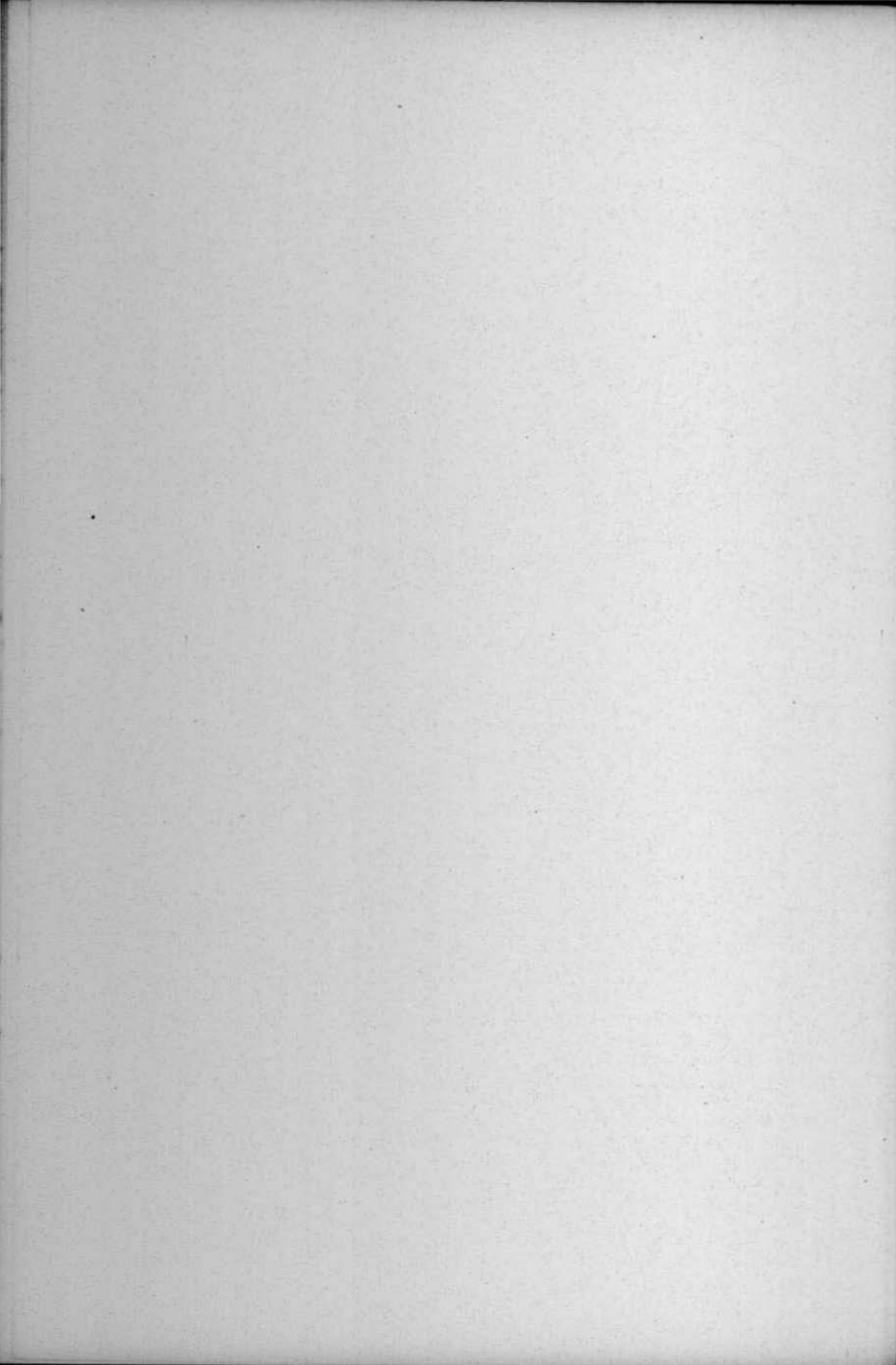
In answer thereto, permit me to say Section 7606, Compiled General Laws of Florida 1927, simply provides that it shall not be unlawful for any retail druggist in this State, who is himself a licensed pharmacist, or who regularly employs a licensed pharmacist to sell in reasonable quantities alcohol to be used for scientific or mechanical purposes * * *. The statute further provides that the person desiring to purchase alcohol for scientific or mechanical purposes shall subscribe to and present to the druggist or pharmacist, an affidavit made before some officer authorized by law to administer oath. The statute prescribes the form of oath, and Section 7607, Compiled General Laws of 1927, provides for the sale of wine to regularly ordained ministers or priests in charge as pastor of a church, or to any duly organized secret organization using wine for sacramental purposes, and the statute requires the purchaser to subscribe to an affidavit as is required in the purchase of alcohol for mechanical purposes, except that the affidavit required for the purchase of wine requires that the name and location of the secret organization or church be stated.

April 9, 1934.

ADVERTISEMENT OF ALCOHOLIC LIQUORS PROHIBITED

Dear Sir:

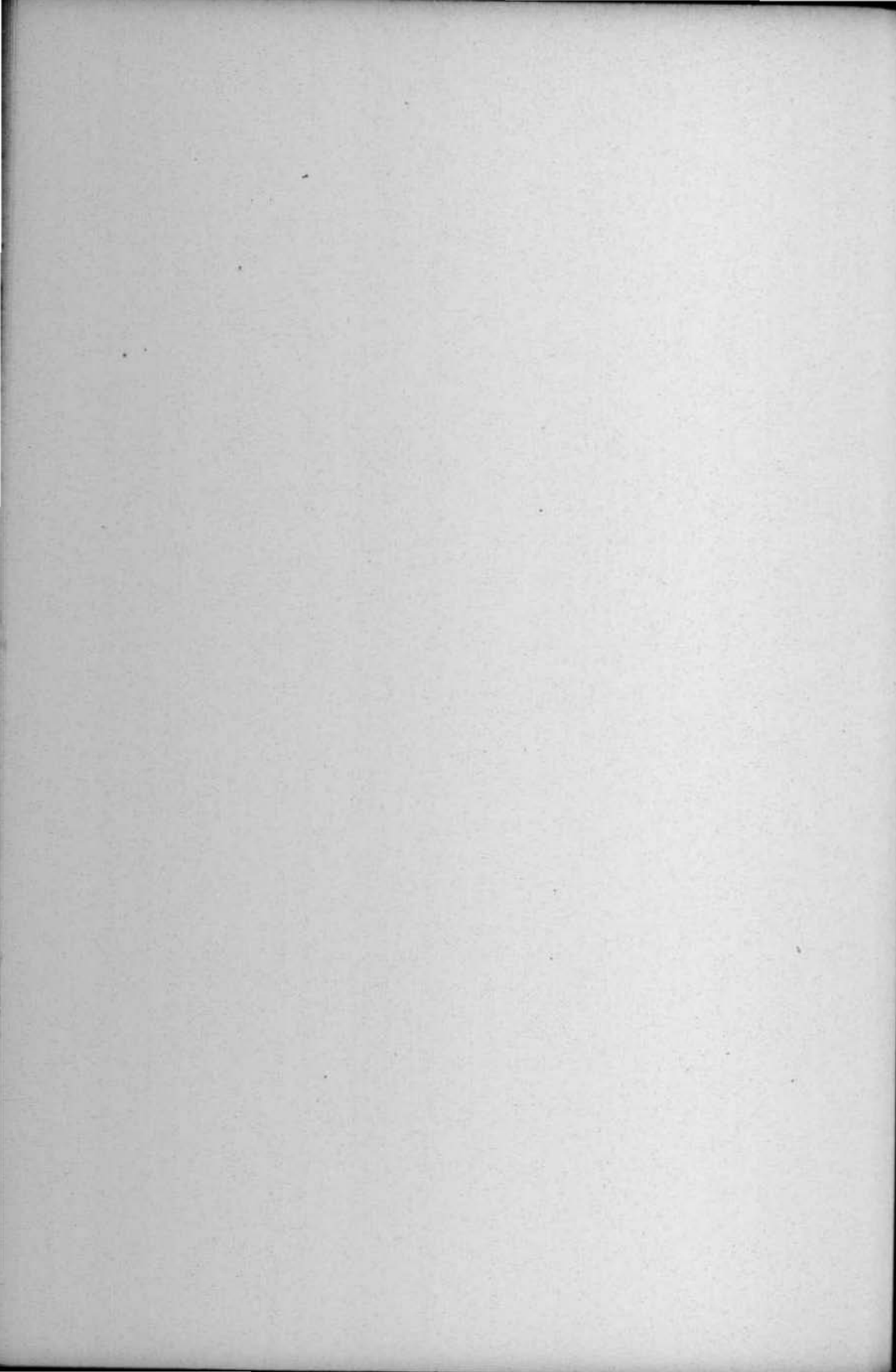
Replying to your favor of April 4th, permit me to say the laws of this State prohibit the advertising in any manner of any alcoholic liquor, which is declared by law to be intoxicating, which includes all liquors except beer, wine and fruit juices containing not more than 3.2% of alcohol by weight.



CHAPTER VI

ELECTIONS

	Page
Section 1. General	343
Section 2. Primary	355
Section 3. Special	365
Section 4. Local Option	369



CHAPTER VI

ELECTIONS

SECTION 1

IN GENERAL

March 12, 1934.

INMATES OF POOR FARM ENTITLED TO VOTE

Dear Sir:

This refers to your favor of March ninth, in which you make inquiry as to whether or not the inmates of the County Poor Farm have a right to vote in any election.

I beg to advise that, if they are qualified otherwise, they have the same right to vote as any other qualified elector. The fact that they are indigent and inmates of the Poor Farm does not disqualify them to vote.

March 15, 1934.

REGISTRATION AND DOMICILE REQUIREMENTS TO VOTE

Dear Sir:

Replying to your favor of March 12th, on whether or not person may register to vote who is unable to read and write their name, I beg to advise that this matter is governed by Section 318, Revised General Statutes of Florida, which provides that the elector must "personally" appear in the office of the Supervisor or Deputy Supervisor and, after being duly sworn must give certain information which is to be entered upon the books and, therefore, as you will see by paragraph 13 of said Section 318 the law requires that the person registering must:

" * * * sign his name in the presence of the Supervisor of Registration, in the general registration book upon the same line where the preceding information is written, and the Supervisor shall then sign his own name upon the said line,"

And add any remarks required by law to be made appropriate thereto. The law also requires that if for any reason a person is unable to sign his name because of some physical infirmity, such as blindness or loss or limb, incapacitating him from writing, he (the Supervisor of Registration) shall so state the fact.

Another provision of Section 318 is, that if a person is unable to write his name through illiteracy, the Supervisor of Registration shall, in addition to entering that fact in the book, shall enter as full a description of such person as possible, giving his height, approximate weight

ELECTIONS IN GENERAL

color, complexion and color of eyes. It will be noted that the obvious purpose of requiring the voter to appear in person before the registration officers, and in requiring him to personally sign his name to the registration books, if he is able to write, is to enable the election officials to identify such person in the event such a question arises as to the identify at the polls.

With reference to that part of your letter as to a party who has moved away but claims Liberty County as their home, I beg to advise that it is immaterial that he may have to leave the county for periods of time in performance of his duties, in business or otherwise, but if that is the place which he intends to be his permanent home, and it is the place to which he returns, then it continues to be his legal domicile and residence. In other words, legal domicile and residence is very largely a matter of intention, coupled with the actually making up of the mind that a particular place is to be a permanent home and domicile. Under these circumstances, it is my opinion that such person should be permitted to register and vote in the county he claims as his home.

March 30, 1934.

SECRET BALLOT ADOPTED IN 1895

Dear Sir:

I am in receipt of your letter of March twenty-sixth, in which you ask the following question:

"When did the State of Florida adopt the secret ballot?"

In reply I beg to say that our present secret official ballot statute, Section 310, Compiled General Laws of Florida, 1927, was adopted in 1895, being Section 28 of Chapter 4328, Acts of 1895.

Prior to this date what is known as the eight ballot box system was in effect. See Section 179, Revised Statutes of 1892.

March 22, 1934.

ELIGIBLE THOUGH MARRIED TO A FOREIGNER TO VOTE

Dear Sir:

Replying to your letter of March 20, permit me to say Section 9, 10, and 368 of Volume 8 of the United States Code Annotated, covers the subject of your inquiry.

Section 9 reads in part as follows:

"A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens; provided, that

ELECTIONS IN GENERAL

any woman citizen who marries an alien ineligible to citizenship, shall cease to be a citizen of the United States. If at the termination of the martial status she is a citizen of the United States, she shall retain her citizenship, regardless of her residence."

In view of the section from which I have just quoted, it is my opinion that an American woman married to a foreigner who is eligible to citizenship in the United States, even though the husband has not applied for citizenship, would be eligible to vote in the State of Florida.

June 13, 1934.

REGISTRATION IN ELECTION DISTRICT NECESSARY TO VOTE

Dear Sir:

Replying to your letter of June 11th, permit me to say the provision in Section 248, Compiled General Laws of 1927, which provides that no person shall be permitted to vote nor shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence, refers to the election district or precinct, and not to the county commissioner's district.

June 22, 1934.

**RECOMMENDATION BY COUNTY EXECUTIVE COMMITTEE FOR
APPOINTMENT OF OFFICER TO FILL UNEXPIRED
TERM OF INCUMBENT**

Dear Sir:

Replying to your favor of June 18th., I beg to advise that the recommendation made by the County Executive Committee, which resulted in the appointment of Mr. Hinley, was a recommendation to the Governor to appoint until the next General Election. Under the opinion to this office rendered to Mr. Vocelle under date of June 15th, on the subject "Election, when Executive Committee may nominate candidate to fill unexpired term," copy of which was sent to you, it was held that the County Democratic Executive Committee may nominate a candidate for Sheriff of your county as the Democratic nominee, the nomination to be certified and filed with the Board of County Commissioners not more than sixty days, nor less than twenty days prior to the day of the General Election, as provided by Chapter 14657, Acts of 1931.

Any qualified elector may seek the nomination to be made by the County Executive Committee, and any person who fails to get the nomination may ask his friends and supporters to write his name on the General Election ballot, but only the name of the Committee nominee shall be printed on the ballot.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS IN GENERAL

July 16, 1934.

RIGHT OF SUFFRAGE AND TO HOLD OFFICE—AFTER
CONVICTION OF CRIME

Dear Sir:

Your letter of July 12, addressed to the Honorable David Sholtz, Governor, has been referred to this office for reply.

You make inquiry as to the right of suffrage and to hold office after conviction of crime.

In reply I refer you to Section 4 of Article VI and Section 5 of Article VI of the Constitution of the State of Florida, reading as follows:

"No person under guardianship, non compos mentis or insane shall be qualified to vote at any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights.

"The Legislature shall have power to, and shall, enact the necessary laws to exclude from every office of honor, power, trust or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime, or who shall make, or become directly or indirectly interested in, any bet or wager, the result of which shall depend upon any election; or that shall hereafter fight a duel or send or accept a challenge to fight, or that shall be second to either party, or that shall be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law."

I also refer you to Section 248, Compiled General Laws of Florida, 1927, which provides that no person shall be entitled to vote who may have been convicted of any felony by any Court of Record. I refer you also to Section 458 of said compilation, which provides that all persons convicted of bribery, larceny, perjury or any other infamous crime, shall be excluded from every office of power, trust or profit, civil or military, within this State, and from the right of suffrage. I also refer you to Section 461 of the same compilation, which provides that every office shall be deemed vacant upon the conviction of the incumbent of any felony, or an offense involving a violation of his official oath.

You refer particularly in your letter of your conviction in the Federal Court upon a plea of guilty. I do not know any of the particulars with reference to your conviction, but I have quoted the above provisions of the State Constitution and refer you to certain of our statutes, in order that you may be able to make your own application to your particular situation.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 347
ELECTIONS IN GENERAL

August 2, 1934.

OPENING AND CLOSING OF REGISTRATION BOOKS

Dear Sir:

Replying to your favor of July 31st., I beg to advise that Section 263 of the Compiled General Laws of 1927 is the Section governing the opening and closing of the Registration books in the Districts and in the office of the Supervisor of Registration prior to the General Election.

The Registration books in the office of the Supervisor of Registration should be opened Aug. 6th., this year, and should be closed October 20th. The registration books this year should be opened in the districts September 3rd. which is the first Monday in September until the second Saturday in the month preceding the day of the election.

The Supreme Court has said that the second Saturday in the month preceding the day of the election in this statute means the second Saturday in the thirty days preceding the day of election, which this year is October 20th.

August 6, 1934

DATE FOR CLOSING REGISTRATION BOOKS

Dear Sir:

Referring to telegram addressed to you by this office under date of July 26th, relative to the opening and closing of registration books, I beg to advise that upon further investigation we find that we were in error in stating that October 20th. is the date for closing registration books prior to the General Election in November. This should have been October 13th.

August 8th, 1934

IF NAME WRITTEN ON BALLOT CROSS MARK MUST BE MADE IN
FRONT OF NAME—NAME OF NOMINEE ONLY CAN
BE PRINTED ON BALLOT

Dear Sir:

Replying to your favor of August 6th, I beg to advise that a person who was not nominated by a political party in a Primary election can not have his name printed on the General Election ballot. See Chapter 14657, Acts of 1931.

A candidate may request the electors to write his name on the blank line on the General Election ballot; however, the Supreme Court has held that in addition to writing in the name, that a cross mark must be

BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS IN GENERAL

made in front of the name by the elector after he has written the name of the candidate on the ballot.

August 17, 1934

PUBLICATION OF LIST OF QUALIFIED VOTERS MAY BE DIVIDED

Dear Sir:

I am in receipt of your letter of the 15th instant, with reference to publication of list of qualified voters under Section 284, Compiled General Laws of Florida, 1927. You make inquiry if you may divide the publication, giving part to one paper and part to another.

Section 284 reads as follows:

"The supervisor of registration of the several counties of this State shall have published within fourteen days after the second Saturday in the month preceding the day in which any general elections is held, a certified list of the registered and qualified electors of each election district wherein such election shall be held."

Under the provisions of the above Section it does not appear you are required to publish the list of all precincts in one paper, but in my opinion you may publish the list for one or more election districts in one paper and the list for other election districts in one or more other papers.

August 21st, 1934

STATUS OF MEMBER WHO MOVES FROM PRECINCT IN WHICH
ELECTED TO ANOTHER COUNTY

Dear Sir:

It is my opinion that where a member of a County Executive Committee moves out of the county with the intention of residing in another county permanently, the County Committee could declare a vacancy and call upon the Chairman of the State Executive Committee to appoint another person from the precinct in which the vacancy existed. Of course, where a person moves away temporarily on business and maintains his voting domicile in the precinct of the county from which he moves, I do not see how a vacancy could be declared to exist.

August 20th, 1934

QUALIFICATION OF ELECTORS TO VOTE—UNIVERSITY OF
FLORIDA STUDENTS

Dear Sir:

Replying to your favor of August 16th, I beg to advise that Section

ELECTIONS IN GENERAL

248 of the Compiled General Laws of 1927, prescribes the qualification of electors, and if a person applies to the Supervisor for registration as an elector for the General Election, and subscribes to the oath required by law, the registration officer must permit such person to register.

Of course you understand that if a person swears falsely regarding his qualification, such person is subject to prosecution, and the right of a person to vote may be challenged at the polling place on the day of election.

September 21st 1934

PUBLICATION OF LIST OF QUALIFIED ELECTORS MUST BE MADE
BY SUPERVISOR

Dear Sir:

Replying to your favor of September 19th, I beg to advise that Section 284 of the Compiled General Laws of 1927 provides that:

"The Supervisor of Registration of the several counties of this State shall have published within fourteen days after the second Saturday in the month preceding the day in which any general election is held a certified list of the registered and qualified electors of each election district wherein such election shall be held."

- (1) The Section quoted is a mandatory provision.
- (2) The publication of the list of qualified voters must be paid for by the County Commissioners.
- (3) The law as it has heretofore been construed requires the Supervisor to furnish the list for publication.
- (4) The county may furnish such necessary assistance as the Supervisor may need to prepare the list for publication.

November 27, 1934.

HOLDING BOOKS OPEN FOR REGISTRATION IN MUNICIPALITY

Dear Sir:

Answering your letter of the 24th instant, I beg to say I do not know of any statute requiring Supervisors of Registration to open registration books at times not provided for by law in order that persons may register for voting in municipal elections. In this connection, I beg to say, however, that there may be some local law or special statute for municipalities providing for the opening of registration books on such occasions. I suggest that you consult your County Attorney since the duties of this office are such as to preclude our attempting to

350 BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS IN GENERAL

look up and construe the multitude of special and local laws relating to various counties and municipalities.

For your general information, I refer you to Section 2946, Compiled General Laws of Florida, 1927, relative to qualification of municipal electors.

September 24, 1934.

REGISTRATION BOOKS—PRECINCT ELECTION OFFICIALS

Dear Sir:

This acknowledges receipt of yours of the 22nd instant, wherein you ask whether or not the county supervisor of registration may divide the list of voters in certain precincts so that one half of the voters appear in one book, roughly, from A to K, and the balance in another registration book containing the names from L to Z; and whether or not following such division there could be two sets of election officials, each of which would attend to the voting of electors whose names appear in each of the books respectively.

I beg to advise that the statutes of Florida do not contemplate such procedure, and that such division of the books is not allowable, nor is it possible to appoint an additional set of officials for the precincts involved.

October 17, 1934.

REGISTRATION OF ELECTOR WHO IS IN GOVERNMENT SERVICE
IN WASHINGTON, D. C.

Dear Sir:

Replying to your favor of October 12, relative to the registration of elector who is in government service in Washington, D. C., I beg to advise that Section 263 of the Compiled General Laws of 1927 governs registration for the General Election, and you will notice that said Section provides that the registration books shall be open from the first Monday in August in each year in which there is any General Election for the registration of electors. Said Section provides that:

"The registration books of each county shall be closed on said second Saturday of the month preceding the day in each year in which there shall be a General Election. And no person shall be allowed to register at any other time than during the period herein provided for the opening of said books for registration of electors."

You state that an elector registered on the General Election books in your county in 1933, and he wishes to know whether or not he should

ELECTIONS IN GENERAL

be required to re-register again this year as a prerequisite to his right to vote.

I assume that the party you have in mind registered for the election held in 1933 under Chapter 16180, Acts of 1933, which was a Special General Election called to vote on the repeal of the Eighteenth Amendment to the Federal Constitution.

Under a strict interpretation of the law the elector should have re-registered this year, but since his name is on the General Election register, if no objection is made to his voting in the coming General Election I suppose his vote would be counted if he is otherwise qualified.

October 22, 1934.

QUALIFIED ELECTOR MAY CAST ABSENTEE VOTE IF ABSENT
FROM COUNTY UNDER SIX MONTHS

Dear Sir:

I am in receipt of your letter of the 17th instant, making inquiry if a person who was qualified to vote in the recent Primary and has since moved to another County but has not been there long enough to register can vote an absentee vote or if the County Commissioners have the power to strike from the registration list the name of such person and deprive him of the vote.

In reply I refer you to Section 248, Compiled General Laws of Florida, 1927, for the statutory qualification of electors at the General Election. You will note that an elector is required to have his residence in Florida for one year and in the County for six months.

Under Section 297 the County Commissioners are authorized to examine and revise the registration books and to erase therefrom the names of all such as have died or removed from the County. Reading this Section in connection with Section 248, above mentioned, I think that the law contemplates the names of persons removing from the County should not be stricken until after the expiration of six months. Under this construction the party you mention would be eligible to cast an absentee vote under the provisions of Sections 429 to 438, Compiled General Laws of Florida, 1927.

November 28, 1934.

MORE THAN ONE DAY'S COMPENSATION ALLOWABLE
TO INSPECTORS AND CLERKS

Dear Sir:

Replying to your letter of the 26th instant, permit me to say Section 306, Compiled General Laws of Florida, 1927, provides that "compensation of Inspectors and Clerks of any Special or General Election of

352 BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS IN GENERAL

any County shall be paid for their services by their respective Boards of County Commissioners; and the Inspectors who carry the returns of such election to their seat and properly deliver shall receive two dollars per day, and five cents per mile each way while performing such service," etc.

Where the County Commissioners believe that the Inspectors and Clerks of elections have performed more than one day's service in connection with an election, I think it would be lawful for the Board to allow per diem compensation for more than one day. I am told this is the practice in many of the counties.

December 6, 1934.

ACCESS TO AND COPYING FROM REGISTRATION BOOKS—LATER
ENACTMENT IN CONFLICT WITH PRIOR LAW

Dear Sir:

I am in receipt of your letter of the 4th inst., calling attention to Paragraph "I", Section 2 of Chapter 16620, Laws of Florida, Special Acts of 1933, reading as follows:

"The Registration Officer of said City shall have free access to the Registration Books of the County of Escambia; with authority to make, or have made, copies of same, so far as they include the election districts in said City."

You also refer to Section 379, Compiled General Laws of Florida, 1927, which provides for any citizen to examine the registration books while in the custody of the Supervisor of Registration but prohibits the making of copies or extracts there from. You state that the Registration Officer of Pensacola will be calling on you in a short while for access to the registration books and make inquiry as to your duties in view of the apparent conflict between the two above mentioned statutes.

In reply I beg to say the 1933 Act is the later statute and prior Acts are controlled by later Acts when any conflict exists. I beg to say further that Administrative Officers, under the ruling of our Supreme Court, are supposed to comply with statutes until the Courts have declared the same invalid.

In this situation it appears to me, it will be proper for you to permit the Supervisor of Registration of Pensacola to have access to your books and that such access should be at such times as you can be present since under Section 293, Compiled General Laws of Florida, 1927, you are the official custodian of the registration books. Again referring to the 1933 Act, you will note that the Supervisor of Registration of the City of Pensacola is given authority to make or have made copies of your registration books so far as they include the Election Districts in said City. Since it will be necessary for you to remain with and keep strict

ELECTIONS IN GENERAL

custody of the books it seems to me it would be a fair thing for the City to pay you a reasonable amount for making such copies after which the Supervisor of Registration of the City might check the same with you against the County Registration books.

December 14, 1934.

RE-REGISTRATION OF VOTERS FOR PRIMARY AND GENERAL
ELECTIONS OF 1936

Dear Sir:

Replying to your favor of December 12th, I beg to advise that Section 7 of Chapter 15630, Acts of 1931, Laws of Florida, became effective January 1st, A. D. 1932. The said Section 7 of the Chapter mentioned above declares that in counties of this State having a population of not less than fifty-five thousand and not more than seventy thousand, according to the last preceding State or Federal Census, "there shall be complete re-registration of voters each and every four years." Under the provisions of Section 7 of the Act, which became effective January 1, 1932, there should be a complete re-registration in counties covered by this Act every four years from January 1st, 1932. Therefore, no re-registration of voters is required under the provisions of the Act until January of 1936.

All registrations appearing on the books now, if there properly and according to law, together with those who may register during the year 1935, will constitute the registration list for the year 1935, but it is my opinion that before an election can be held during 1936 there must be a complete re-registration of electors.

October 3, 1934.

METHOD OF DELIVERY; NO COMPENSATION PROVIDED
BY LAW THEREFOR

Dear Sir:

I am in receipt of your letter of the 2nd instant making inquiry if the County Commissioners should pay you for delivering District Registration Books to District Registration Officers throughout the County and in which you state that the precincts are badly scattered and it cost you a considerable sum to deliver same.

In reply I beg to say that I find no statute making specific provision for compensation for such service.

Your attention is called to Section 7465, Compiled General Laws of Florida, 1927, which penalizes County Commissioners voting to pay any claim against the County not authorized by law. See also Section 7466

BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS IN GENERAL

penalizing the Clerk of the Circuit Court for signing warrant to pay claims against the County not authorized by law.

Section 287, Compiled General Laws of Florida, 1927, provdes as follows:

"Immediately upon the expiration of the time for registration at the several precincts, each District Registration Officer shall promptly deliver his book and blanks left in his possession to the Supervisor of Registration at the County site."

It seems to me that the Supervisor of Registration might well arrange for District Registration Officers to call at his office for the respective books or that such books might be forwarded to such District officer by mail thus saving any burdensome expense for their delivery.

ELECTIONS

SECTION 2

PRIMARY ELECTIONS

March 19, 1934

LAWS GOVERNING PRIMARY ELECTIONS TO BE HELD IN JUNE 1934

Dear Sir:

DATES FOR HOLDING PRIMARY ELECTIONS

First Primary to be held June 5th, 1934.

Second Primary to be held June 26th, 1934.

Polls open at eight o'clock A. M., and close at sundown.

REGISTRATION BOOKS—WHEN TO BE KEPT OPEN

Section 363 of the Compiled General Laws of 1927, which is a section of the Primary Election Law, provides for keeping the registration books open in the districts from the first Monday in March to and including the first Monday in April. Section 369 of the Compiled General Laws, which is likewise a part of the Primary Election law, makes it the duty of the Supervisor of Registration to keep the registration books open at his office between the first Monday in April and May first. *In view of the provisions of this Section, it is my opinion that the registration of electors for the Primary Election should not be allowed in the Supervisor's office during that period of time that the law requires the books to be kept open in the districts.*

REGISTRATION—WHEN REQUIRED

There does not appear to be a statute requiring transfer of names of electors from the General Election registration books to the Primary Election books. Therefore, a person who has not registered heretofore for a Primary Election should register for such election, even though he may have previously registered for the General Election.

Section 366 of the Compiled General Laws of 1927 provides:

"In all election precincts located wholly or in part within a city of more than 20,000 population, biennial registration shall be required. * * * And all persons so registered shall be deemed duly registered electors for the General Election next following the Primary for which they register, and for any Special Election held subsequent to the General Primary for which they register, and prior to the next following General Primary, and their names shall be carried on the registration books as duly registered electors for such elections."

In view of the provisions quoted above, it appears to be clear that one biennial registration in the counties described above is all the law requires, and that such registration must be prior to the General Primary Election.

PRIMARY ELECTIONS

POLL TAX—LAST DAY FOR PAYMENT

Section 16 of Chapter 13761, Acts of 1929, provides that:

"No person, unless exempt under the provisions of law relating to General Elections, shall be permitted to vote at a Primary Election who shall have failed to pay on or before the third Saturday preceding the day of the first Primary Election, as herein provided for, his poll taxes for the two years next preceding the year in which such Primary Election shall be held, nor shall any person be permitted to vote at any such Election, whose name does not appear on the registration books as required by law."

Saturday, May 19th, 1934, is the third Saturday preceding the day of the first Primary Election, and is, therefore, the last day on which Poll taxes can be paid in order to vote in June Primaries.

POLL TAX—EXEMPTION FROM PAYMENT

The exemption from payment of poll tax by War Veterans and members of the National Guard is covered by Sections 248, 910 and 2070 of the Compiled General Laws of 1927. A War Veteran *who has lost a limb, or any person who has reached the age of 55 years*, is entitled to the exemption from payment of poll tax, regardless of whether or not he was injured in the War. If a War Veteran was actually disabled in the War while in the Army or Navy service, he is entitled to exemption from payment of poll tax. See Section 910 of the Compiled General Laws.

PARTY AFFILIATION—CHANGE OF

Section 365, Compiled General Laws of Florida, 1927, provides for change of party affiliation at any time after the General Primary, next following his registration, by making application in writing, duly signed by the applicant, to the Superintendent of Registration, *at least 60 days before the date of any General Primary*, for such change.

OATH AND FILING FEE—WHEN AND WHERE FILED

Oath and filing fee of candidates to be voted for in more than one county must be filed with the Secretary of State *not less than 30 days before the first Primary*. *Midnight, May 6th, 1934, is the latest date for filing.*

Oath and filing fee of candidates to be voted for wholly within a single county *must be filed with the Clerk of the Circuit Court not less than 25 days before the first Primary*. *Midnight, May 11th, 1934, is the latest date for filing.*

CAMPAIGN EXPENSE STATEMENTS—WHEN AND WHERE FILED
FIRST STATEMENT

First Itemized Campaign Expense Statements for *candidates for National or State offices must be filed with the Secretary of State; and candidates for State Senator, Representatives in the Legislature, and other county offices, must be filed with the Clerk of the Circuit Court not more*

PRIMARY ELECTIONS

than 30 days, nor less than 25 days prior to the Primary Election. May 11th, 1934, is the last date for filing this Statement.

SECOND STATEMENT

Second Itemized Campaign Expense Statement must not be filed prior to May 24th, 1934, and not later than May 28th, 1934

THIRD STATEMENT

Third Itemized Campaign Expense Statement must be filed not later than July 6th, 1934.

PORTRAIT AND CAMPAIGN PAMPHLET—WHEN AND WHERE FILED

If a candidate desires a portrait of himself, or herself, as the case may be, in the Campaign Pamphlet published by the Secretary of State, the same must be filed with the Secretary of State not later than 33 days prior to the date of the Primary. May 3, 1934, is the latest date for such filing.

March 29th, 1934

NEGROES NOT PERMITTED TO REGISTER AS DEMOCRATS

Dear Sir:

Replying to your favor of March 28th, I beg to advise that it appears that under the provisions of Section 377 of the Compiled General Laws, which provides that the State Executive Committee of each political party may by Resolution declare the terms and conditions on which legal electors shall be declared and taken as proper members of such party and, therefore, entitled to vote in the Primary Election as members of that party.

It shall be the duty of the Supervisor of Registration of the various counties in the registration of electors to comply with the terms of any such Resolution upon the filing with them of copies thereof duly certified by the Chairman and Secretary of any such Executive Committee at any time before the opening of the registration books, as provided by law. In view of the fact that the State Executive Committee of the Democratic Party by Resolution Number Two declared that only white persons be declared and taken as proper members of the Democratic Party, and in view of the fact that Section 377 of the Compiled General Laws requires the Supervisor of Registration to comply with the terms of any such Resolution that negroes should not be permitted to register as Democrats. It is my opinion that under the terms of the Resolution, and the provisions of the law, that negroes are clearly prohibited from registering as Democrats. A negro may register and vote as a member of any Party which has not by Resolution excluded him and, of course, any elector may vote for the Democratic candidates in the General Election.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
PRIMARY ELECTIONS

April 18, 1934.

CONSTRUCTION OF LAW GOVERNING REGISTRATION OF STUDENTS OF UNIVERSITY OF FLORIDA

Dear Sir:

Enclosed herewith you will find copy of letter under date of February 27th, 1934, addressed to Hon. R. H. Weaver, which states the law governing registration of electors.

In view of the law as cited, I think it is largely a matter for the individual student at the University to decide for himself, whether or not he can conscientiously subscribe to the oaths prescribed by Section 3 of Article VI of the Constitution of the State of Florida, and the oath prescribed by Section 373, page 150 of the Compiled General Laws. The oath provided for by Section 3 of Article VI of the Constitution of the State reads as follows, to-wit:

"I do solemnly swear or affirm that I will protect and defend the Constitution of the United States, and the State of Florida. That I am 21 years of age, and have been a resident of the State of Florida for 12 months, and of this county for 6 months, and I am qualified to vote under the Constitution and laws of the State of Florida."

The oath prescribed by Section 373 on page 150 of the Compiled General Laws reads as follows, to-wit:

"I having been first duly sworn, say, upon oath that the statement here entered opposite my name, as to my qualifications as an elector, are true."

See also page 149, First Division, Compiled General Laws, which is a part of Section 373, mentioned above.
N. B.—See following letter.

February 27, 1934.

QUALIFICATION OF ELECTOR; OATH; PENALTY FOR FALSE OATH

Dear Sir:

"Replying to your letter of February 24th, permit me to say:

"Section 248, Compiled General Laws of Florida, 1927, contains the following provision:

"Every person of the age of 21 years and upwards, that shall at the time of registration be a citizen of the United States, and shall have resided and had his or her habitation, domicile, home and place of *permanent abode* in Florida for one year and in the county for six months, shall, if otherwise qualified according to law in such county be deemed a qualified elector at all elections under the Constitution."

PRIMARY ELECTIONS

"The same Section provides that "no person shall be permitted to vote, or shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence."

"The question of whether or not a person has his or her permanent place of residence in a particular county of this State is one of fact, and the applicant for registration is required to subscribe to the oath provided for in the second paragraph of Section 373, Compiled General Laws of Florida, 1927. Section 8179, Compiled General Laws of Florida, 1927, provides that:

" 'Whoever shall wilfully and corruptly make any false oath, affidavit or sworn statement provided for in Article II, Chapter 1, Title IV, First Division of the Compiled General Laws shall suffer the pains and penalties of perjury.'

"The oath provided for in Section 373 is a part of the Article, Chapter and Title of the Compiled General Laws, referred to above.

"The question of whether or not a member of the Civilian Conservation Corps, commonly called "C. C. C. boys," or any other person may qualify to vote in an election in this State depends upon whether or not he can honestly subscribe to the oath prescribed by Section 373, Compiled General Laws. If any person subscribes to the oath knowing that he does not have a permanent place of residence in an election district of a particular county in this State, such person would be subject to prosecution under Section 8179, Compiled General Laws of Florida, 1927, mentioned above, because it is necessary under the law for an applicant for registration to subscribe to an oath that he is a qualified elector under the Constitution and laws of this State."

May 29, 1934.

FAILURE TO FILE SECOND CAMPAIGN EXPENSE STATEMENT

Dear Sir:

Relative to the failure on the part of Mr. ——— to file his second campaign expense statement with you personally, within the time prescribed by law, and relative to the question of whether or not under the circumstances you could legally have his name printed on the primary election ballot, permit me to say Mr. ——— has stated to me that he went to your office on Friday, the 25th of May, about 2 P. M. to file his second campaign expense statement; that he found your office closed, and that he left the same with Mr. ———, Justice of the Peace, whose office is in the Court House, and that he was assured by Mr. ——— that he would file the statement with you.

The Supreme Court of Florida on May 22, 1934, filed an opinion in the case of State of Florida ex rel Theresa D. Ashton, plaintiff in error,

PRIMARY ELECTIONS

vs. W. S. Harris, as Chairman of the Board of County Commissioners of Sarasota County, and in that opinion the Supreme Court intimated that where a campaign expense statement was filed with the Clerk of the Court one day late, reasonable excuse for not filing the statement on time, such as sudden illness, accident, mailing in time to reach the filing officer before the last day expires, and the like, would probably justify the county commissioners in having the name of such candidate printed on the primary election ballot, notwithstanding his failure to file the statement with the Clerk personally on the day specified by law.

Under the circumstances in Mr. ——— case, it is my opinion that the campaign expense statement should be accepted and his name printed on the primary election ballot, provided, of course, there is attached to the campaign expense statement an affidavit made by Mr. ——— and Mr. ———, setting up the facts in connection with the matter.

June 13, 1934.

PARTY EXECUTIVE COMMITTEES—CANDIDATE RECEIVING
PLURALITY IN FIRST PRIMARY ELECTED

Dear Sir:

Referring to your letter of June 12, with reference to the requirements for the election of party committeemen in primary elections, I beg to advise that this office has consistently held, since 1930, that the candidate receiving a plurality in the first primary election is elected. I quote from a letter of Attorney General Fred H. Davis, now Chief Justice of the Supreme Court of Florida, dated June 9, 1930, and reported in the Attorney General's Biennial Report for 1929-1930.

"Construing Section 347 of the Compiled General Laws in connection with Section 361 of the Compiled General Laws as amended by Section 2 of Chapter 13761, Acts of 1929, as well as Section 18 of the same Act, it appears to me that insofar as members of State, County and Congressional Executive Committees of political parties are concerned, the person who shall receive the highest number of votes cast for such position in the *first* primary are to be deemed elected as Committee members, and consequently no second primary is necessary, even though the person who receives the highest number of votes for such Committee position did not receive a majority of the votes cast therefor."
(Italics supplied).

This office has adhered to and followed that ruling in all opinions asked for and given out on the subject ever since.

However, you understand that our opinion in such matter is not binding on anyone.

June 15, 1934.

NAME OF CANDIDATE RECEIVING THIRD GREATEST VOTE CAN
NOT BE PLACED ON BALLOT IN SECOND PRIMARY

Dear Sir:

Replying to your oral inquiry of this date, permit me to say Section 14 of Chapter 13761, Acts of 1929, contains the following provision:

"Provided, that there shall be printed upon the ballot prepared for second primary elections only the names of candidates who shall have received in the first primary election the greatest and next greatest or equal number of votes. * * *"

In view of the provision of the Section quoted above, it appears that the county commissioners would not be authorized to have printed on the ballot for the second primary election the name of a candidate who received the third great number of votes cast in the first primary election.

The law does not appear to provide any express procedure for the candidate who received the second greatest number of votes in the first primary, withdrawing as a candidate prior to the second primary election. However, inasmuch as it is the duty of the county canvassing board to declare who are the nominees of a political party for a particular office, and whereas, it is the duty of the board of county commissioners to have the names of the party nomination printed on the primary election ballot, it seems to me that if a candidate who received the second greatest number of votes cast in the first primary election should formally notify the board of county commissioners and the Clerk of the Circuit Court, that he desires to withdraw as a candidate after the first primary and prior to the second primary, the county commissioners and Clerk would be authorized to leave such name off the ballot in the second primary.

The question of whether or not a candidate receiving the third greatest number of votes in the first primary could be a candidate in the second primary, where the candidate receiving the second greatest number of votes, withdraws as a candidate, is one which has not been definitely settled by the courts of this State. Therefore, any person who does not feel disposed to be guided by this opinion, may test the matter in a court of competent jurisdiction.

June 15, 1934.

WHEN EXECUTIVE COMMITTEE MAY NOMINATE CANDIDATE

Dear Sir:

This will reply to your favor of June 15th, in which you ask my opinion as to whether or not, in the case of a vacancy caused in a State or county office by the death, resignation, or other cause, of a State or county officer who was not subject to nomination in the last primary election, the State or county executive committee, as the case may be,

PRIMARY ELECTIONS

of a political party may name a nominee for the office, if no method is otherwise provided for filling such vacancy.

The third paragraph of Section 14 of Chapter 13761, Acts of 1929, amending certain sections of the Revised General Statutes of 1920, which pertains to nomination of candidates by the executive committee of a political party, reads as follows:

"In the event of the death, resignation or removal of any person nominated for office in the primary election between such primary election and the ensuing general election, or if for any cause there is a vacancy in any nomination, and no method is otherwise provided herein for filling such vacancy, then and in that event the procedure shall be the same as is hereinbefore provided for the nomination of candidates, in case no candidate receives a majority of the votes cast in the primary election. And all such nominations shall have the same force and effect, and shall entitle the nominees to all the rights and privileges that would accrue to them as if they had been nominated in the regular primary election."

The first paragraph of Section 14 of Chapter 13761, contains the following provision:

"If in the second primary election any candidate shall receive a majority of the votes cast therein for such office, he shall be declared nominated for such office, but if no candidate shall receive a majority of the votes cast therein for such office, it shall be the duty of the appropriate canvassing board to immediately notify the chairman of the State, Congressional, or County Executive Committee, as the case may be, to that effect, and it shall thereupon be the duty of such chairman to call a meeting of the appropriate committee within ten days, giving written notice to the members thereof of the time, place and purpose of such meeting, at which meeting said committee shall have the power to nominate, by majority vote, a candidate for such office, and certify same immediately thereafter to the Secretary of State or Board of county commissioners, as the case may be, who shall cause the name of such nomination to be placed upon the official ballot to be voted at the ensuing general election, and all nominations so made and certified shall have the same force and effect and shall entitle the nominee to all rights and privileges as though such nominee had been legally nominated in the primary election provided for in this article."

In the case of *State vs. Tyler*, 100 Fla. 1112, 130 So. 721, the Supreme Court, in its opinion rendered November 1, 1930, said:

"When a party primary election has been held at which there were no candidates for nomination for a given office, so that no nomination for that office results, the executive committee

PRIMARY ELECTIONS

of the party is without authority under Section 14 of Chapter 13761, Acts of 1929, to designate an original party nominee for such office."

This opinion was filed prior to the enactment of Chapter 14657, Acts of 1931, which is an Act to amend Section 256, Revised General Statutes, the same being Section 312 of the Compiled General Laws of 1927, which provided that candidates might get their names printed on the general election ballot by petition. The amended Act reads as follows:

"The board of county commissioners of each county shall cause to be printed on the ballots to be used in their respective counties only the names of the candidates who have been put in nomination by primary election or the appropriate executive committee of any political party in this State, when the same has been certified and filed with them not more than sixty days nor less than twenty days previous to the day of election, which certificate shall contain the name of each person so nominated, and the office for which he is nominated, and shall be signed and sworn to by the members, or a majority thereof, of the appropriate canvassing board of primary elections, *or in case of a nomination by an executive committee by the chairman and secretary thereof, provided, that all committee nominations shall be made as provided by the laws governing primary elections.* * * *

You will observe that the section above quoted contemplates the nomination, by the appropriate executive committee of any political party in this State, of a candidate, where no candidate has been otherwise provided.

It seems to me to be clear from the language quoted above, that it was the legislative intent to provide a method by which a political party could furnish a nominee for an office, where a vacancy occurred between the primary and the general election; particularly, where the vacancy occurred at such time that the electors did not have an opportunity to vote for candidates in a primary election, and thus provide a party nominee for the vacant office.

Therefore, it is my conclusion that where the incumbent of a State or county office dies or resigns, or the office for any other reason becomes vacant, between a primary election and the next ensuing general election, and there is no nominee and no method prescribed by law to otherwise provide one, a nominee may be provided for by the State Executive Committee, if the vacancy is in a State elective office, or by the county executive committee, if the vacancy is in a county elective office.

It is inconceivable that the Legislature in enacting laws authorizing political parties of this State, as defined by statute, to provide party nominees for all State and county offices would have enacted statutes which would make it impossible for such political parties to provide in some way for a party nominee for an office which for any cause became

PRIMARY ELECTIONS

vacant between the closing date for qualification of candidates in the party primary and the next ensuing general election.

If the law should be construed to mean that where a vacancy occurs between the closing date for candidates to qualify and the ensuing general election, no method is provided by law for a political party to furnish a candidate by its executive committee, the result would be that the electors would have to write in their choice on the general election ballot, and this, in case of a vacancy in a State office, might result in there being a candidate from each of the sixty-seven counties, or even a greater number of candidates, whose names, as has been often the case, might be spelled by the electors in many different ways, all of which would lead to confusion, trouble, and probably to litigation in the Courts.

Therefore, aside from the fact that Chapter 14657 appears to authorize the party executive committees to nominate a candidate in cases where no other method is provided by law, it is my opinion that as a practical matter, the law should be so construed, and this office therefore holds that where a vacancy occurs in a State or county office, between the closing date for candidates to qualify for nomination in a primary election and the ensuing general election, for which office there is no other legal manner in which a candidate may be named by a political party as defined by the laws of this State, such political party may name a candidate for the office by action of its appropriate executive committee, and such candidate so nominated and certified shall have the same force and effect and entitle the nominee to all rights and privileges, as though such nominee had been regularly nominated in a primary election as provided in Section 14 of Chapter 13761, Acts of 1929.

I do not mean to hold that the nomination by a party committee would preclude the electors writing in the name of another candidate at the general election.

July 18, 1934.

**ONE CANDIDATE ONLY, QUALIFYING, SHOULD BE DECLARED
PARTY NOMINEE**

Dear Sir:

Replying to your favor of July 18th., I beg to advise that this office has heretofore held that where a candidate for a party office or where a candidate for a State or County office properly qualifies in a Primary election, and he alone qualifies, that even though a majority of electors write in the name of a candidate who failed to qualify, that the man who did qualify should be declared the party nominee.

ELECTIONS

SECTION 3

SPECIAL ELECTIONS

March 13, 1933.

QUALIFICATION SAME AS TO ELECTORS AS AT GENERAL
ELECTION; POLL TAX MUST BE PAID; BALLOT

Dear Sir:

The Legislature of 1895 enacted Chapter 4328, the title of which is as follows:

"An Act to provide for the registration of all legally qualified voters in the several counties of the State, and to provide for general and special elections and for the returns of election."

Section 5 of that Act, which is now Section 254 of the Compiled General Laws of Florida 1927, provides for special elections to be held when a vacancy occurs in the office of State Senator or member of the House of Representatives of the State, when there is a session of the Legislature to be held after the vacancy and before the next general election.

Section 30 of Chapter 4328, which was Section 256 of the Revised General Statutes of 1920, and 312 of the Compiled General Laws of Florida, 1927, provided the means for having names printed on the official ballot to be used at elections authorized by said Chapter, which includes both general and special elections.

As originally enacted, Section 30 of the Act required the county commissioners to cause to be printed on the official ballots, the names of all candidates put in nomination by caucus, convention, mass meeting, primary election, or other assembly of any political party, and also the names of any qualified elector requested to be a candidate for any office by written petition signed, in the case of county office, by at least 25 electors qualified to vote in the election to fill said office.

Section 30 of the Act has been repeatedly amended and modified since its original enactment, but the provision for printing names on the ballot where parties were requested by petition, had not been amended, altered or repealed until 1931, when the Legislature by Chapter 14657 amended Section 256 of the Revised General Statutes of 1920, which was originally Section 30 of Chapter 4328, and eliminated therefrom any provision or authority for printing on the official ballot to be used in general or special elections the names of candidates requested by petition, the said Act providing that the county commissioners shall cause to be printed on the official ballots only the names as in said Act provided.

There is, therefore, now no authority in law for printing the names of persons on official ballots to be used at either general or special elections, who have been petitioned to be candidates for any office to

SPECIAL ELECTIONS

be filled at such election. The only names that can be printed on the official ballots to be used at either special or general elections are those placed in nomination at primary elections, or by the executive committee of political parties, and only then when such nominations are made in accordance with the provisions of law.

The executive committee may nominate only when no candidate has received a majority of the votes at the second primary election held for the nomination of candidates, or in the event of the death, resignation, or removal of any person nominated for office in a primary election between such primary and the ensuing general election, or in case of a vacancy in any nomination and no method is otherwise provided for filling such vacancy, or in the event of an election to fill a vacancy in either house of the Legislature during a regular session thereof, the executive committee may nominate and certify candidates whose names shall be printed on the official ballot to be used at a special election to fill such vacancy. None of those provisions however, fit the situation created by a vacancy caused by the death of a member of the State Legislature occurring after the general election and prior to the convening of the next ensuing session of the Legislature.

In view of the provisions of Chapter 14657, Acts of 1931, prohibiting the printing of names on the official ballot to be used, except as specially authorized and provided by law, and in view of the lack of any provision for nominating candidates and authorizing the printing of their names on the official ballots to be used in special elections held to fill vacancies occurring in the office of State Senator or member of the House of Representatives, caused by death of the member between the general election and the next ensuing session of the Legislature, there is, therefore, no provision of law whereby the name or names of any person may be printed on such official ballot.

The qualification of electors to vote at the special election called to be held to elect a representative in your county to fill the vacancy caused by the death of the member elected at the last general election, will be the same as the qualification to vote at the last general election, except that in addition thereto the 1932 poll taxes must be paid.

August 22, 1933.

REGISTRATION MAY BE SOLELY IN OFFICE OF SUPERVISOR OF
REGISTRATION

Dear Sir:

In response to your verbal request of this date I will say that after further considering the provisions of House Bill No. 5 in connection with the general election laws, I have reached the conclusion that it is not necessary for the supervisor of registration to send the registration books out into the several precincts of the county prior to the special election to be held October 10, 1933.

SPECIAL ELECTIONS

It is my opinion that you may notify the several supervisors of registration that the registration of electors for the special election above referred to may be done solely in the office of the supervisor of registration, and that under the law this is all that is legally necessary to accomplish a valid registration for the special election above mentioned.

September 16, 1933.

AMENDMENT TO FEDERAL CONSTITUTION, QUALIFICATION OF
DELEGATES TO CONVENTION

Dear Sir:

Replying to your letter of September 11th, relative to the election to be held October 10th to ratify or reject a proposed amendment to the Federal Constitution, permit me to say it is necessary that a candidate for delegate to the Convention file a petition with the Secretary of State, signed by five hundred qualified electors.

Under the provisions of House Bill No. 5, Acts of 1933, all electors who were qualified to vote in the last General Election are qualified to vote in the Special Election to be held October 10th. Those who were not qualified to vote in the last General Election will have to register and pay poll taxes for the two years next preceding the year in which the election is held, unless they are legally exempt.

You ask if it is necessary for the supervisor of registration to certify that the five hundred names appearing upon the petition of a candidate are qualified electors. The law does not expressly require that this be done.

As to whether the Convention can be held if less than sixty-seven candidates qualify, permit me to say this question is premature, and it would probably be necessary for a court of competent jurisdiction to take answer thereto. However, House Bill No. 5 contains a provision that the delegates to the Convention shall be the judges of the qualification of its membership.

July 26, 1934.

WHO ELIGIBLE TO VOTE IN SPECIAL TAX SCHOOL
DISTRICT ELECTIONS

Dear Sir:

Answering your letter of July twenty-fourth, I beg to say that only persons paying a tax on real or personal property are eligible to vote in a special tax school district election. The payment of such tax by a husband on property owned by him does not entitle the wife to vote. If the election is to be held for the issuance of bonds, only freeholders are eligible to vote.

The Supreme Court of Florida has defined a freeholder as one

SPECIAL ELECTIONS

who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee-simple estate in land, which means that a wife's dower right does not make her a freeholder under the laws of Florida, nor entitle her to vote in such elections. See *Dean vs. State*, 74 Fla. 277, 77 So. 107.

ELECTIONS

SECTION 4

LOCAL OPTION ELECTIONS

July 18, 1934.

APPLICATION OF CONSTITUTIONAL AMENDMENT IN RE METHOD OF CALLING

Dear Sir:

Replying to your favor of July 14th, I beg to advise that Section 3 of the proposed Amendment to Article XIX of the Constitution of the State of Florida contains the following provision:

"Until changed by elections called under this Article, the status of all territory in the State of Florida as to whether the sale is permitted or prohibited shall be the same as it was on December 31st, 1918, Provided that at the General Election in 1934 or at any time within two years after this Article becomes effective, the Board of County Commissioners of any county shall upon application of 5% of the registered voters of the county, call and provide for an election to decide whether the sale shall be prohibited in such county. Said election to be otherwise as provided in Article 1 (Section one) hereof."

The Section quoted above has been construed to mean, that upon application of 5% of the registered voters of a county, that the County Commissioners shall call and provide for an election. Of course you understand that if the amendment to the Constitution fails of adoption, the result of the local option election would be a nullity.

August 10, 1934.

WET AND DRY ELECTION IN BAY COUNTY— NOVEMBER GENERAL ELECTION

Dear Sir:

Replying to your favor of August 8th, on the above subject, I beg to advise that under the provisions of House Joint Resolution No. 83, Acts of 1933, the County Commissioners are required to call an election upon application of 5% of the registered voters to decide whether or not the sale of intoxicating liquors shall be prohibited in the county, and if the application signed by 5% of the voters is for an election to be held on the day of the General Election this year, then under the provisions of the Resolution the Commissioners must call and provide for the election to be held on that day.

The application for the election should be filed within sixty days of the General Election.

August 15, 1934.

PREREQUISITE FOR CALLING

Dear Sir:

Answering your letter of the 13th instant, I beg to advise that Section 3 of the proposed amendment to Article XIX of the Constitution of the State of Florida, reads as follows:

"Until changed by elections called under this Article, the status of all territory in the State of Florida as to whether the sale is permitted or prohibited shall be the same as it was on December 31, 1918, provided that at the General Election in 1934 or at any time within two years after this Article becomes effective the Board of County Commissioners of any County shall, upon the application of five per cent. of the registered voters of the County, call and provide for an election to decide whether the sale shall be prohibited in such County, said election to be otherwise as provided in Article 1 hereof."

The above quoted Section has been construed to mean that upon application of 5% of the registered voters of a County the County Commissioners shall call and provide for an election. Of course, you understand that if the amendment to the Constitution fails of adoption, the result of a local option election would be a nullity.

August 20, 1934.

RACE TRACK ELECTIONS—CLOSING DATE FOR REGISTRATION
AND PAYMENT OF POLL TAXES

Dear Sir:

I am in receipt of your letter of the 17th instant, advising that a race track election is to be held in your County on October 16th, and you make inquiry as to the last date of registration and the last date for payment of poll taxes for this election.

As to the last date for the payment of poll taxes, I refer you to Section 6 of Chapter 14832, Laws of Florida, Acts of 1931, a portion of which reads as follows:

"That for such election the registration books of such county shall be opened on the tenth day (if the said tenth day be Sunday or a holiday, then on the next day not a Sunday or holiday) after said election is ordered and called, and shall remain open for a period of ten days for additional registration of persons qualified for registration not already registered and electors for such special election shall have the same qualifications for and prerequisites to voting in elections as under the general election laws."

Since the qualification of electors, under said Section, must be the same for such election as the qualification of electors in a General

LOCAL OPTION ELECTIONS

Election, I refer you to Section 248, Compiled General Laws of Florida, 1927, governing the payment of poll taxes, which provides that "no person shall be permitted to vote at an election who shall have failed to pay at least on or before the fourth Saturday preceding the day of such election his or her poll taxes for the two years next preceding the year in which such election shall be held." As the election you speak of is to be held on October 16th, the fourth Saturday preceding such date is September 22nd. Therefore, the last date on which poll taxes may be paid for this election is September 22nd.

As to the last date for registration for this election, I again refer you to that part of Section 6, Chapter 14832, Laws of Florida, Acts of 1931, above quoted, from which you will note that you are required to open the registration books for this election on the 10th day after said election is ordered or called, and keep such books open for a period of 10 days additional. This is the limitation of time for which you are required to keep the registration books open for such election. However, considering the subsequent part of said paragraph, which requires electors to have the same qualifications as electors in General Elections, it is my opinion that in the event the registration books should be open for registration in the General Election and any person registers after said ten day period, he would be eligible to vote provided such registration is on or before the second Saturday of the month preceding the day of election, which would be in conformity with Section 263, Compiled General Laws of Florida, 1927, which provides that registration books shall be kept open for General Elections "until the second Saturday of the month preceding the day in each year in which there is any General Election."

Chapter 15629, Laws of Florida, Acts of 1931, with reference to re-registration of voters in certain counties, including Pinellas County, provides that registration books shall close before each General Election, Special or Primary Election, at the time and in the manner now required by law. We, therefore, see that this Act does not make any change in the law as to the last day for registration.

In construing the above quoted words "the second Saturday of the month preceding the day in each year in which there is any General Election" I refer you to the case of *State v. White*, 73 Fla. 426, 74 So. 486, where the Court in construing a similar expression held that such expression means calendar month "or that period of time elapsing between a given date and the corresponding date of the next preceding month by name." The word "between" is construed in the case of *Hodges v. Filstrup*, 94 Fla. 943, 114 So. 521, where the Court used this language: "The word 'between' when used in speaking of the period of time between two days, generally excludes the days designated as the commencement and termination of such period."

Since the day of election is on October 16th, it is necessary, under the above mentioned decisions, to go back to September 16th and after

372 BIENNIAL REPORT OF THE ATTORNEY GENERAL
LOCAL OPTION ELECTIONS

excluding said date count to the second Saturday, which is September 29th.

In view of the above, it is my opinion that persons may register to vote in said race track election to be held on October 16th to and including September 29th, provided the registration books should be open to and including said date.

September 7, 1934.

AUTHORIZED TO BE HELD AT GENERAL ELECTION

Dear Sir:

In response to your communication of September fifth, I beg to advise that under date of August 17, 1934, the following opinion was rendered by me in response to a telegram sent by the Miami Herald:

"Retel sixteenth it is my opinion House Joint Resolution Number eighty-three proposing constitutional amendment Article nineteen authorizes local option election to be held at the General Election in nineteen thirty four *but not before* stop if the amendment is adopted by the people then the local option election would be effective and the other provisions of said Article would be controlling as to local option elections held in accordance therewith afterwards."

No contrary opinions have been issued by this office since that date, and we have consistently adhered to this opinion which we now confirm to you.

September 8, 1934.

INTOXICATING LIQUORS—PROPOSED AMENDMENT
TO ARTICLE 19

Dear Sir:

This is in response to your communication of the 6th instant, wherein you ask five questions regarding House Joint Resolution No. 83, proposing an Amendment to Article 19 of the Constitution of Florida, relating to prohibition. I shall answer these questions in the order asked:

(1) It is my opinion that a local option election may be held at the time of and concurrently with the coming General Election on November 6, 1934. This is in accordance with the precise terms of Section 3 of the proposed Amendment.

(2) It is my opinion that in the local option election held at the General Election in 1934, the question to be submitted may be placed on the General Election ballot. The logical place for such question to

LOCAL OPTION ELECTIONS

appear on the ballot would be as the last item thereof, immediately following all the constitutional amendments.

A suggested form for the wording of this portion of the ballot is as follows:

TO DECIDE WHETHER THE SALE OF INTOXICATING
LIQUORS, WINES OR BEER SHALL BE PROHIBITED IN
_____ COUNTY, FLORIDA.

To vote against prohibiting the sale of intoxicating liquors, wines or beer in _____ County, Florida, mark a cross (X) in the blank space before the words "For Selling;" to vote in favor of prohibiting the sale of intoxicating liquors, wines or beer in _____ County, Florida, mark a cross (X) in the blank space before the words, "Against Selling."

Proposition: To Decide Whether the Sale of Intoxicating Liquors, Wines or Beer shall be Prohibited in _____ County, Florida.

_____ For Selling.

Proposition: To Decide Whether the Sale of Intoxicating Liquors, Wines or Beer shall be prohibited in _____ County, Florida.

_____ Against Selling.

(3) It is my opinion that in the event a local option election is desired at the General Election in 1934, it is necessary that the application or petition signed by the requisite five per cent of the registered voters of the county, must be filed on a date not longer than sixty days prior to such general election. In other words, with the date of the General Election fixed at November 6, 1934, the application or petition must be presented to the board of county commissioners on or after September 7, 1934. In the event such petitions have already been submitted, it is my suggestion that to be safe, there should be another presentation of either the same or an additional petition signed by the requisite number of voters at a meeting of the board of county commissioners on or subsequent to September 7, 1934.

(4) It is my opinion that in the event a local option election is held concurrently with the General Election in 1934, the returns thereof should be canvassed by both the County Canvassing Board (consisting of the Supervisor of Registration, the County Judge, and a member of the board of county commissioners) and the board of county commissioners, in order to preclude any question on this score. There is no reason why this cannot be done, and I suggest the certificate as to the returns on this question to be made by both the board of county commissioners and the County Canvassing Board.

(5) A suggested form of minutes to be used by boards of county commissioners in calling local option elections is as follows:

LOCAL OPTION ELECTIONS

Mr. _____ presented an application to the Board as follows:

APPLICATION FOR LOCAL OPTION ELECTION

To the Honorable The Board of County Commissioners of _____ County, Florida:

The undersigned registered voters of _____ County, Florida, hereby make application to the Board of County Commissioners of _____ County, Florida, to call and provide for an election in said county to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein.

Said application was signed by many registered voters of _____ County, Florida. Accompanying the said application was a letter from _____, Supervisor of Registration of _____ County, Florida, as follows: (Letter stating that the supervisor has compared the signatures to the petition with registration books and finds that the petition contains the signature of more than 5% of the registered voters of _____ County, Florida).

Commissioner _____ then moved that said letter and said application be filed. Said motion was seconded by Commissioner _____ and on being put to a vote was unanimously carried.

Commissioner _____ then moved that the Board immediately examine said application. Said motion was seconded by Commissioner _____, and on being put to a vote was unanimously carried. The Board then examined said application.

Commissioner _____ then offered the following resolution and moved its adoption:

Whereas, an application was presented to this Board on this the _____ day of September, 1934, asking this Board to call and provide for an election in _____ County, Florida, to determine whether the sale of intoxicating liquors, wines or beer shall be prohibited in said county; and

Whereas, this Board has examined said application and finds that said application is signed by more than 5% of of the registered voters of said county;

It is, upon consideration thereof, ordered that an election be and the same is hereby called, that said election be held in _____ County at the general election in 1934 on the 6th day of November, 1934, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited in said county.

It is further ordered that _____, Clerk of this Board, shall give at least 30 days' notice of said election by publishing the same in one newspaper in each and every city and town in said _____ County where a newspaper is published.

LOCAL OPTION ELECTIONS

The said motion to adopt said resolution was seconded by Commissioner_____.

Said motion and resolution were put to a vote on call of the roll, and on roll call the resolution and motion were adopted by the following vote:

For the motion and resolution:_____

Against the motion and resolution:_____

You further ask for a suggested form of notice of the call of such election, which is as follows:

NOTICE OF ELECTION TO DECIDE WHETHER THE
SALE OF INTOXICATING LIQUORS, WINES OR BEER SHALL
BE PROHIBITED IN_____COUNTY, FLORIDA.

Pursuant to resolution providing for and calling an election to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited in_____County, Florida, notice is hereby given that such election will be held on November 6, 1934, in _____County, Florida, for the purpose of deciding whether the sale of intoxicating liquors, wines or beer shall be prohibited in said county. The time and place of voting shall be the same as for the General Election to be held on said date.

Clerk Board of County Commissioners

County, Florida.

The manner of publishing said notice is also asked, and I advise as follows:

The said notice should be published in one newspaper in each and every city or town in the county involved; in the event that there is no newspaper published at all in such county, then such notice should be posted in at least ten of the most public places in said county, one of which shall be the courthouse.

The said notice need be published but once in such newspapers, but the publication thereof must be on a date not less than thirty days prior to November 6th. In other words, Saturday, October 6, 1934, is the last date upon which such notice may be published. Such notice need not run once a week for the thirty days, but one insertion in all of said papers is sufficient. In the event it is necessary to post the notice because of a lack of any newspapers in the county, then such posting must take place not later than October 6, 1934.

In the event no newspaper at all is published in such county, then the resolution above suggested should be varied accordingly, in regard to the notice of election.

You will note that because of the necessity of the thirty-day notice, October 6, 1934, is also the final date upon which the application or petition may be submitted to the board of county commissioners. For

LOCAL OPTION ELECTIONS

the practical handling of the matter, it is obvious that if the petitioners wait until the last day, it may be impossible to check the petition properly and get the notices to the papers in time for publication on that date.

September 14, 1934.

SHOULD BE HELD AT SAME TIME PROPOSED
AMENDMENT IS VOTED UPON

Dear Sir:

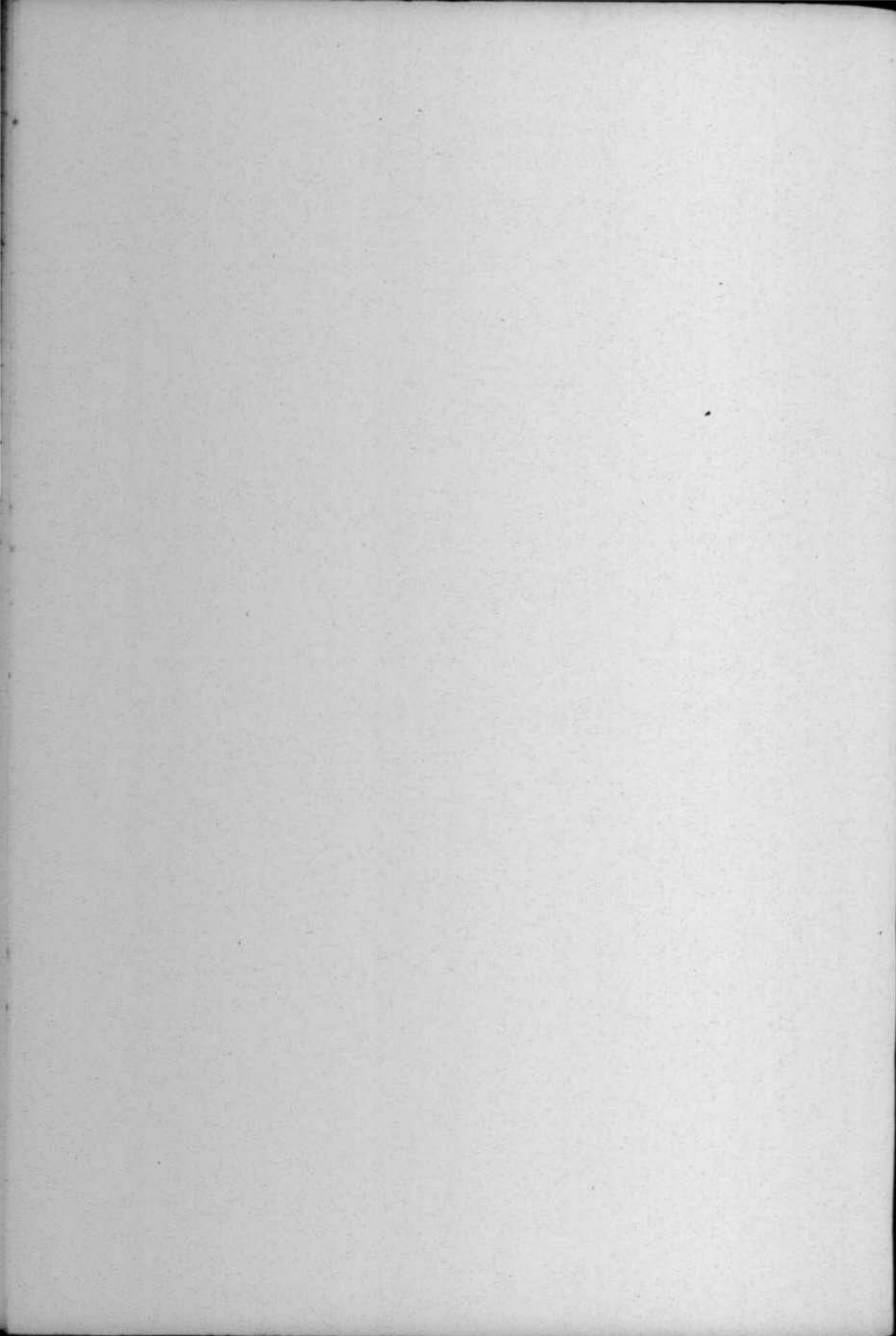
This acknowledges receipt of yours of September twelfth, relative to the holding of local option elections at the same time that the proposed amendment to Article XIX is to be voted upon.

I have carefully considered your letter and understand your thought about the situation, but, upon further careful consideration, I am still of the opinion that my original opinion issued from this office is correct, and that these local option elections should be held, where the proper petitions are filed, at the proper time, unless the Courts should hold to the contrary.

In the event that your clients feel so inclined to get the matter before the Courts, I shall be glad to facilitate such proceedings in order that we might get a determination before the expenditure of the money that may be necessary to carry on these local option elections.

CHAPTER VII

APPROPRIATIONS



CHAPTER VII

SECTION 1

APPROPRIATIONS

January 25, 1933.

SALARIES CERTAIN OFFICERS NOT TO CONFLICT WITH SALARY FIXED BY STATUTE

Dear Sir:

I am in receipt of your letter of the 20th instant, requesting my construction of the following language contained in Section 2 of Chapter 15719, Laws of Florida, Acts of 1931, which is the general appropriation act for two years from June 30, 1931:

"Provided, that in no instance shall this Act be construed as affecting any salary fixed by any law or statute of the State of Florida or as authorizing the payment of any salary in excess of that otherwise fixed by any other law or statute of the State of Florida.

You state that the salary named in said Chapter for certain officers is different from the salary prescribed by former statutes still in force with reference to such officers, and make inquiry as to whether the former statute or the appropriation act of 1931 is controlling. You also make inquiry if the former general appropriation act of 1929, Chapter 14483, would have any bearing.

In reply I beg to say that the above quoted proviso in the 1931 general appropriation act in my opinion limits the salary to any officer to the amount named in existing former salary fixing statutes. If the salary named in the former salary fixing statute is greater than the amount named in the 1931 general appropriation act, and such former statute contains no continuing appropriation clause, the amount named and appropriated in the general appropriation act would be the only amount that could be paid.

The appropriation act of 1929 was for only two years, and while the fixing of salaries in said act in larger sums than named in former acts may have had the effect of suspending the force of the former acts for the period of the two year appropriation, since it contained no such proviso as above quoted, I do not think that the former statutes are repealed thereby, and I do not think that the 1929 appropriation act would have the effect of fixing any such salaries for future years.

APPROPRIATIONS

February 8, 1933.

DOES NOT REPEAL LAW IN RE MOTOR VEHICLE LICENSE
COMMISSIONER AND AUTO THEFT DEPARTMENT*Dear Sir:*

The question has arisen and my opinion has been called for with reference to the appropriations made by the General Appropriation Bill covering the Motor Vehicle License Commissioner and the Auto Theft Department.

Both of these departments operate under separate substantive laws, each of which carries continuing appropriations for the enforcement and administration of the Acts. Further, it is my opinion that the General Appropriation Bill does not repeal these separate substantive Acts covering these two departments, for the reason that the Appropriation Bill cannot repeal general substantive laws.

March 23, 1933.

STATE PRISON FARM AND STATE BOARD OF HEALTH

Dear Sir:

This is in reply to verbal request made by your office with reference to moneys appropriated and available for expenditure for the State Prison Farm and by the State Board of Health during the biennium beginning June 30, 1931.

First, as to the State Prison Farm:

There is appropriated in the General Appropriation Act of 1931 for the State Prison Farm for certain designated salaries, as set forth on pages 1209, 1210 and 1211 of the General Acts for 1931 various amounts, but from all of these specific items out of the General Revenue Fund there must not be expended any excess over \$115,000.00. In addition to this, there is the general levy of Three-eighths of a Mill. This is a continuing appropriation, which is appropriated for the general expenses of the Stae Prison Farm. In other words, there is appropriated for the State Prison Farm the specific sum of \$115,000.00 out of the General Revenue Funds, as above stated, plus the three-eighths of a Mill general tax levy, as to whatever that will produce.

Second, as to the State Board of Health:

There is appropriated out of the General Revenue Fund of the State for specific purposes as set forth in the General Appropriation Act of 1931, on pages 1211, 1212, 1213, 1214 and 1215, down to the point or heading: "Special Fee Fund," a great list of items and expenditures for which there may be amounts expended from the General Revenue Fund not to exceed in the total of these items the sum of \$272,920.00, and

BIENNIAL REPORT OF THE ATTORNEY GENERAL 381
APPROPRIATIONS

in addition to this there is levied for general expenditures for the State Board of Health a general State tax levy of One-Fourth Mill. In other words, it is proper to expend by the State Board of Health the items and amounts set forth in the General Revenue Act above referred to, sums not to exceed \$272,920.00, plus whatever may be received from the One-Fourth Mill levy for general expenditures.

June 3, 1933.

UNEXPENDED BALANCE MAY BE CARRIED FORWARD

Dear Sir:

I am in receipt of your letter of this date making inquiry whether the unexpended balance of \$3,994.59, under the provisions of Chapter 11369, Laws of Florida, Acts of 1925, may be carried forward for use at this time, and I note your further reference to certain sections of the General Appropriation Act of 1931, Chapter 15719.

In reply I beg to say that Chapter 11369 of 1925 is a separate Act from the General Appropriation Act, and does not appear to be limited to any particular period of time. I do not find any subsequent Act that appears to repeal or restrict said Chapter 11369, and it is my opinion that the above mentioned unexpended balance may be carried forward for use at this time or any future time.

June 17, 1933.

SALARIES HEADS OF DEPARTMENTS INCLUDED

Dear Sir:

I have now received a copy of the appropriation bill, Session of 1933, and it is my opinion that the \$27,992.00, appropriated for salaries must be considered as including your salary.

In other words, it is my opinion that each department should consider the salary of the head of the department as part of the total amount appropriated for salaries.

July 24, 1933.

CONSTRUCTION IN RE SALARIES JUDGES, STATE ATTORNEYS
AND COURT REPORTERS

Dear Sir:

This refers to your favor of July 22, wherein you state that the general appropriation bill providing moneys for payment of Judges, State Attorneys and Reporters is not sufficient by a certain amount to make payment in full, provided that the \$250,000.00 is the maximum amount

APPROPRIATIONS

that can be paid the Judges, State Attorneys and Reporters for their salaries for each fiscal year.

It is my opinion that \$250,000.00 is the maximum amount that can be paid each fiscal year. The salary bill, Senate Bill No. 15 of the 1933 Session of the Legislature, fixes the annual salaries and provides that these salaries shall be paid in equal monthly instalments; therefore, it is my opinion that you should pay to each officer one-twelfth of the total amount of his salary, as fixed by the salary bill, each month, until the appropriation is exhausted. In other words, the monthly amount of salary shall not be reduced unless and until there is a failure of money appropriated to meet the monthly payments.

July 25, 1933.

INTERPRETATION IN RE MOTOR VEHICLE LICENSE COMMISSION

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, the amounts appropriated under the head of Motor Vehicle License Commission, in said statute, are payable from the funds received under the provisions of Section 1332, Compiled General Laws of Florida, 1927, and Section 1304, Compiled General Laws of Florida, 1927, as amended by Chapter 15625, Laws of Florida, Acts of 1931. The amounts set out in Chapter 15858, would appear to be the maximum allowed for expenditures for such purposes.

July 25, 1933.

MOTOR VEHICLE DEPARTMENT

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, the amounts appropriated under the head of Auto Theft Department, in said statute, are payable from the funds received under the provisions of Sections 3984 and 3985, Compiled General Laws of Florida, 1927. The amounts set in Chapter 15858 would appear to be the maximum allowed for expenditures for such purposes.

July 25, 1933.

STATE PRISON FARM

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that in my opinion the amounts

APPROPRIATIONS

appropriated in said statute, under the head State Prison Farm, should be paid from funds received under the provisions of Section 8615, Compiled General Laws of Florida, 1927, if such funds are sufficient for such purpose. Otherwise, I think any balance may be paid from the General Revenue Fund.

July 25, 1933.

MISCELLANEOUS ITEMS

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15853, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, all items listed in the statute are intended as items of appropriation, notwithstanding the language of the first paragraph of Section 1 of said statute is apparently indefinite. The title of the Act indicates this purpose, and the Legislature has so interpreted at least one item not appearing under either of the specific headings "Salaries" or "Necessary and regular expense." See Section 1-A, near the bottom of page 8 of the bill printed in pamphlet form, you will note also near the middle of the same page the following language: "There is hereby further appropriated." This indicates that the preceding items, regardless of headings, were considered by the Legislature as items of appropriation.

July 25, 1933.

STATE BOARD OF HEALTH

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, the amounts appropriated in said statute under the head of State Board of Health should be paid from funds received under the provisions of Section 3172, Compiled General Laws of Florida, 1927, as amended by House Bill No. 135, being Chapter 16179, Laws of Florida, Acts of 1933, if sufficient. Otherwise, any balance may be paid from the General Revenue Fund.

July 25, 1933.

ITEMS APPROPRIATED FOR GOVERN OVER ERRONEOUS TOTAL

Dear Sir:

I have your letter of the 20th inst., with reference to Chapter 15858, Laws of Florida, Acts of 1933, calling my attention to the appropriation for the Agricultural Experiment Station. You mention the fact that

APPROPRIATIONS

the total, as printed in the statute, is less than the sum of the amounts set opposite the items, and make inquiry as to which will control.

In my opinion, the intent of the Legislature was to appropriate for each item the amount set opposite thereto and that the erroneous total should be disregarded.

July 25, 1933.

HOTEL COMMISSION

Dear Sir:

Answering your letter of the 21st inst., relative to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, the appropriations in said statute under the head of State Hotel Commission should be paid from funds received under the provisions of House Bill No. 586, being Chapter 16042, Laws of Florida, Acts of 1933.

July 25, 1933.

PAYABLE FROM GENERAL REVENUE FUND, UNLESS
OTHERWISE SPECIFIED

Dear Sir:

Answering your letter of the 20th inst., I beg to say that in my opinion all sums appropriated in Chapter 15858, Laws of Florida, Acts of 1933, are payable from the General Revenue Fund of the State unless otherwise provided therein with reference to certain items, or unless otherwise provided by law.

July 25, 1933.

GENERAL APPROPRIATION DOES NOT INCLUDE COST
OF ADMINISTRATION OF CERTAIN FUNDS

Dear Sir:

Answering your letter of the 21st inst., I beg to say that, in my opinion, the appropriation to the office of State Comptroller, under Chapter 15,858, Laws of Florida, Acts of 1933, is not intended to cover the administration of the following statutes, but such administration in each instance should be paid from funds received under such statutes:

Documentary Stamp Act, Chapter 15787 of 1931;
Small Loan Act, Chapter 10177 of 1925;
Board of Administration, Chapter 14486 of 1929;
Auto Transportation, Chapter 14764 of 1931;
Gasoline License, Chapter 15659 of 1931;
Inheritance and Estate Tax, Chapter 14739 of 1931.

APPROPRIATIONS

July 25, 1933.

FLORIDA SECURITIES COMMISSION

Dear Sir:

Answering your letter of the 20th inst., with reference to Chapter 15858, Laws of Florida, Acts of 1933, I beg to say that, in my opinion, the amounts listed in said statute under the head of *Florida Securities Commission* may and should be paid from receipts under Chapter 14899, Laws of Florida, Acts of 1931, if such receipts are sufficient for such purpose. Otherwise, I think payment thereof may be made from the General Revenue Fund.

August 3, 1933.

CONSERVATION DEPARTMENT—CONSOLIDATION
OF APPROPRIATIONS

Dear Sir:

I have your letter of August 2nd, asking "whether or not the General Appropriation Bill limits the salaries and expenses of the Conservation Department in accordance with the appropriations set out under the three Commissions that were consolidated. In other words, for salaries should we set up \$8,000.00, \$70,000.00 and \$22,000.00, which would make a total of \$100,000.00, as the total amount that could be expended by the State Board of Conservation and should we require the supervisor of the State Board of Conservation, in sending his vouchers to this office, to so designate on each voucher the particular part of his Department so that in paying of these vouchers we could charge salaries of \$8,000.00 to the State Geologist Department, \$70,000.00 to the State Game and Fresh Water Fish Department, and \$22,000.00 to the Shell Fish Commission? Or would it only be necessary for us to set up the \$100,000.00, which is the total of these three departments for salaries and charge all salary bills of the State Board of Conservation to this one item?

It is my opinion that the total amount for salaries and the total amount for necessary and regular expenses, as set out in the General Appropriation Bill, passed by the 1933 Legislature (Senate Bill No. 442), under the three departments or offices abolished, should be carried on your records as one appropriation for necessary and regular expenses and one appropriation for salaries for the "State Board of Conservation." For example: The total appropriation for salaries in the three Departments or offices abolished is \$100,000.00. This is the amount you will carry on your books as the Salary Appropriation for the "State Board of Conservation." It will not be necessary for the Supervisor of Conservation to designate the particular division of the Department to which a voucher drawn by the Department should be charged. The appropriations made under Senate Bill No. 442 of the 1933 Legislature for the three Departments or offices abolished were by Committee Substitute for

APPROPRIATIONS

House Bill No. 153 of the 1933 Legislature transferred to the "State Board of Conservation." This latter Act does not preserve any divisions or departments within the "State Board of Conservation."

August 28, 1933.

OLD SOLDIERS' AND SAILORS' HOME

Dear Sir:

I am in receipt of your letter of the 12th instant, advising that the 1933 Legislature failed to make an appropriation for the Old Soldiers' and Sailors' Home and inquiring if the 1931 General Appropriation is a continuing appropriation for said Home.

In reply I beg to say, in my opinion, the General Appropriation Act of 1931, Chapter 15719, was only for the two year period ending June 30, 1933. However, Chapter 11841, Laws of Florida, Acts of 1927, appears to be a continuing appropriation for the Old Confederate Soldiers' and Sailors' Home in Duval County.

October 7, 1933.

ALL ITEMS NOT OTHERWISE SPECIFIED TO BE PAID FROM
GENERAL REVENUE

Dear Sir:

This refers to your favor of October fifth.

Your letter refers to the appropriation item in the general appropriation bill, to-wit: Section 2-A of Chapter 15858, Acts of 1933. This appropriation applies to the allowance to the *Superintendent of Public Instruction* and the *State Treasurer* for additional help in handling the school funds, etc.

It is my opinion that the appropriation mentioned is to be paid out of and from the general revenue fund of the State. All appropriations made in the general appropriation act, unless otherwise specified, are payable out of the general revenue fund of the State. I find nothing that would indicate this particular appropriation should be paid out of any specific fund; therefore, it is my opinion that the appropriation should be paid from the general revenue fund.

November 18, 1933.

SALARIES NOT AUTHORIZED TO BE PAID FROM EXPENSE ITEM
STATE SERVICE OFFICER

Dear Sir:

I am in receipt of your letter of November seventeenth, advising that the State Service Officer is using all of his salary appropriation for salaries and that he needs an additional stenographer. You make inquiry

APPROPRIATIONS

if an expenditure of \$50.00 per month, for such stenographer from the expense item of the appropriation for said office, may be approved.

In reply, I call your attention to Section 2 of the 1933 appropriation act, Chapter 15858, reading as follows:

"Any sum or sums herein appropriated for salaries if not required for such purpose, may be applied to other necessary and regular expenses of the Department to which they are appropriated, but in no event shall any sum or sums specifically appropriated for expenses be applied to salaries."

In view of the above and the fact that the appropriation act makes separate and specific provisions for salaries and for expenses of said Department, it is my opinion that the specific appropriation for expenses may not be used for paying the monthly salary of such stenographer.

January 2, 1934.

HOTEL COMMISSION—ACT CREATING COMMISSION TAKES
PROCEDURE OVER GENERAL APPROPRIATION ACT

Dear Sir:

This is in answer to your communication of December 29, 1933, in which you ask for my opinion as to whether or not Section 33, Chapter 16042, Acts of 1933, constitutes the appropriation for the State Hotel Commission, or whether the items set up in the regular Appropriation Bill govern.

It is my opinion that Section 33 of Chapter 16042 constitutes the governing appropriation for the State Hotel Commission, and that such items as may have been included in the General Appropriation Bill are not to be regarded by you, nor are they to govern the Comptroller's office or be a limitation on the maximum expenditure.

This is in line with my opinion to the Comptroller of December 11, 1933, and I trust that it answers your inquiry fully.

January 26, 1934.

NATIONAL GUARD

Dear Sir:

In your letter of January twenty-fifth, you state that in setting up the amount of appropriation for the fiscal year 1932-33, your office used the maximum sum authorized by the Legislature in the appropriation bill of 1931, to-wit: \$109,754.00, from which the Comptroller deducted five thousand dollars, claiming that items 25 and 26 were authorized for only one year, and that the total amount should be reduced for the second year by that amount.

APPROPRIATIONS

This is the same matter that you discussed with me personally the early part of this week. In our discussion of the matter, you stated that the sum total of the several items set out in the appropriation bill of 1931, under the heading "Florida National Guard," far exceeded the maximum allowed as fixed in the last paragraph of the appropriation bill relating to your Department. As a matter of fact the several items listed total \$110,440.00, including items 25 and 26. Since items 25 and 26 were for only one year and were used during the first year of the biennium, that amount would have to be deducted from the total of all the items to find what could be spent during the second year. This is true because Section 2 of the appropriation bill of 1931 provides as follows:

"Section 2. Any item or items herein and hereby appropriated is the maximum amount to be expended annually for such items; * * *"

It appears, therefore, that your appropriation for the second year would be the total amount of the several items, except items 25 and 26, which is the sum of \$105,440.00.

February 17, 1934.

APPLICATION OF 1933 APPROPRIATION ACT TO THE STATE ROAD DEPARTMENT

Dear Sir:

This is in response to your communication of February 16th, 1934, in which you ask my opinion as to the proper application of the 1933 General Appropriation Act to the State Road Department.

In the said Act, being Chapter 15858, Acts of 1933, under the heading "State Road Department," is the following language:

"Salaries not to exceed \$166,500.00. This is to come out of the revenues of the State Road Department, and to be used as a guide for the maximum permissible to spend."

From your communication it appears that the following constitute the administrative personnel engaged in the administration of the law pertaining to the State Road Department, and in carrying out the duties imposed thereby on a general State-wide basis:

"Members of the State Road Department, its Secretary and his clerical attendants;

"Auditing Department, which includes the Cost Accounting Division;

"The executives and employees of the Engineering Department, whose duties include work which in its nature pertains to the State at large. Under this Division I think should be listed the State Highway Engineer and his Secretary, Assistant Highway

APPROPRIATIONS

Engineer, Consulting Engineer, Assistant Office Engineer, General Office Project Engineer, Assistant Federal Aid Project Engineer, Division Engineer of Plans, Specifications and Surveys, certain draftsmen and designers, with their clerical attendants, who are employed in work of a general state-wide character, and the Bridge Department, including the Bridge Engineer and his Assistant and clerical attendants;

Clerks of the Filing Department in the Tallahassee office;
Stenographers in the Tallahassee office;

Legal Department clerks;

Supervisor of Traffic rates;

Certain clerks of the State Purchasing Department who are paid out of funds of this Department;

All State Inspectors whose headquarters are in Tallahassee."

You will note under Section 1644, Compiled General Laws of Florida, 1927, it is the duty of the State Road Department to estimate its resources for the ensuing year which are available for the construction and maintenance of roads and to make up a budget of maintenance and construction work to be done during the ensuing year, the same being so planned as to exhaust the estimated resources of the Department for the year, less 10% for emergency purposes. In such budget estimates are included the total costs of such construction and maintenance work, including salaries of those employees whose time and attention will be devoted to the particular projects involved; but none of the administrative personnel, above listed, are paid their compensation in such manner. In other words, with the exception of the salaries of the administrative personnel, above listed, the salaries of other employees are charged against particular projects as included in the budget of planned construction and maintenance work.

The sole question we have in mind is to determine the intent of the Legislature in inserting the above quoted provision in the General Appropriation Act of 1933. From an examination of the 1931 General Appropriation Act, being Chapter 15719, Acts of 1931, we find that the Legislature set forth a schedule of salaries as a guide only. We find also that the request of the State Road Department to the Budget Commission, as found in the Report of such Commission as rendered to the 1933 Legislature, on pages 105-107, requested no specific total nor recommended such, but merely listed certain items as a guide for salaries and called attention to the said Section 1644 in regard to making up the budget of construction and maintenance work.

It is also significant that the appropriation of 3¢ of the State Gasoline Tax was allowed to stand undiminished as the appropriation for the State Road Department, and the amount thereof for the fiscal year of 1933 amounted to \$6,500,000.00 and is estimated to amount to \$6,000,000.00 for the year 1934. A comparison between the total salary items of the State Road Department for years preceding the Appropriation

APPROPRIATIONS

Act of 1933, together with the revenues of the Department and the salary guide as set up in the 1933 Act, together with the revenues of the Department, will conclusively show that it could not possibly have been the intent of the Legislature that these revenues should be administered and by an organization the total salaries of which should not exceed \$166,500.00; but on the contrary, if taken in connection with the prior Appropriation Acts and the duties concerning the Budget and the authority vested in the Road Department concerning expenditures, shows to my mind that the obvious intent of the Legislature in inserting the above quoted provision in the 1933 Appropriation Act was merely to give to the State Road Department a guide for the maximum which it should spend for salaries of the administrative personnel of the Department engaged in duties of a State-wide nature and whose salaries are not charged against or paid out of the costs of particular projects.

April 17, 1934.

STATE PRISON SYSTEM—LIMITATION BY 1933 APPROPRIATION
BILL ON SALARIES PAID EMPLOYEES IN CONNECTION
WITH SECTION 8615, COMPILED GENERAL LAWS 1927

Dear Sir:

This is in response to your communication of April 13, 1934.

You advise that Chapter 15858, Acts of 1933, known as the General Appropriation Bill, sets the amount of salaries to be paid employees of the State Prison Farm, and ask whether or not this limitation is to govern you in the drawing of warrants therefor, when taken in connection with Section 8615, Compiled General Laws of 1927.

Said Section 8615 constitutes a continuing appropriation of the proceeds of the three-eighths mill levy for the expenses of the State Prison System, other than the care and maintenance of such convicts as may be delivered to the State Road Department, and provides that all moneys delivered from such levy are paid into a special fund known as "State Prison Fund," and provides:

"* * * and so much thereof as may be necessary to carry out the provisions of this law is hereby appropriated and is made subject to be expended by the Board of Commissioners of State Institutions for the purposes hereinbefore mentioned, and the Comptroller is hereby authorized and directed to draw his warrant in payment of any such expenses when approved by the Board of Commissioners of State Institutions."

It is my opinion that the 1933 General Appropriation Act is ineffective as a limitation upon the expenditure under the provisions of said Section 8615 of all of the proceeds of the three-eighths of one mill levy.

APPROPRIATIONS

April 25, 1934.

EXPENDITURE FROM GENERAL REVENUE BY LIVE STOCK
SANITARY BOARD FOR EMPLOYMENT OF VETERINARIAN,
UNDER LEGISLATIVE AUTHORIZATION*Dear Sir:*

This is in response to your communication of April 24, 1934, in which you state that in connection with the hog cholera control work for Madison County District, the State Live Stock Sanitary Board has employed a veterinarian; and that the moneys from the one-half mill special tax levied pursuant to Chapter 16287 (Senate Bill No. 193), Acts of 1933, are insufficient to pay this additional expense. You ask whether under my opinion of July 7, 1933, the same may be paid from the General Revenue Fund, pursuant to the appropriation made by Chapter 15858 (Senate Bill 442), Acts of 1933—the same being the General Appropriation Act.

It is my opinion that my former ruling upon this matter controls, and that the effect of the partial repeal of Chapter 16285 by said Chapter 15858, authorizes the payment of this expense out of the general appropriation contained in said Chapter 15858. Such payment, of course, would be made from the General Revenue Fund.

April 30, 1934.

USE OF FUNDS APPROPRIATED FOR SALARIES FOR PAYMENT OF
NECESSARY AND REGULAR EXPENSES*Dear Sir:*

In your letter of the 26th instant you state that the Plant Board has expended the amount for "necessary and regular expenses" but still has a sufficient amount under Salaries to pay their salaries and necessary and regular expenses until the end of this fiscal year, and you inquire as to your authority to issue warrants covering vouchers for "necessary and regular expenses" of the employees of said Board, and charge same to the appropriation of salaries to said Department.

Upon your statement as to sufficient funds in the Salary Account to pay all salaries for the Department, and necessary and regular expenses, your authority clearly appears from the following language of Section 2, Chapter 15858:

"Any sum or sums herein appropriated for salaries, if not required for such purposes, may be applied to other necessary and regular expenses of the Department to which they are appropriated, * * *."

BIENNIAL REPORT OF THE ATTORNEY GENERAL
APPROPRIATIONS

May 8, 1934.

EFFECT ON BY A PRIOR CONTINUING APPROPRIATION
FOR ROYAL PALM PARK

Dear Sir:

This is in response to your communication of May 5, 1934, in which you ask whether or not the appropriation of \$2,000 made by Chapter 15858 from the General Revenue Fund, for the care and upkeep of Royal Palm State Park is in addition to the appropriation of \$2500 per annum, made by Section 1703, Compiled General Laws of 1927.

The appropriation made by the Act of 1933 is for the care and upkeep, and the appropriation under the said Section 1703 is to be expended exclusively in the development, improvement, and maintenance of the said Park, its building and grounds and the payment therefor.

It is my opinion that the appropriation made by the Act of 1933 is an appropriation in addition to the continuing annual appropriation made by the said Section 1703.

July 11, 1934.

PROCEDURE FOR PAYMENT OF JURORS, WHEN APPROPRIATION
IS INSUFFICIENT

Dear Sir:

This is in response to your communication of June 27th, wherein you advise that the \$200,000 appropriation to cover necessary and regular judiciary expense, which includes pay for jurors and witnesses throughout the State, is exhausted. You ask in what manner this matter may now be handled.

By reference to Section 4481, Compiled General Laws of 1927, you will find the procedure in the event the amount appropriated by the Legislature is insufficient. This procedure is briefly as follows:

If you have reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of *jurors*, you have the power to apportion what money there is in the Treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors in each county at the last regular term of the particular counts involved; the Treasurer then remits only the amount so apportioned, and when the amount so apportioned is insufficient to pay in full all the *jurors*, the Clerk of the Court involved then apportions the money received by him pro rata among the jurors and gives to each juror a certificate of the amount of compensation still due, which certificate is then to be considered and held by you as other demands against the State. If, of course, there is no money to so apportion, then certificate should be given for the full amount to which the jurors may be entitled, and such certificates treated in the same manner as if there had been an apportionment.

APPROPRIATIONS

You will note, however, that this applies only to the pay of jurors, and has nothing to do with the pay of witnesses before the grand jury; as to these there is no provision made in the event of a deficiency in the appropriation, and therefore nothing can be done in regard to the pay of such witnesses except by a subsequent act of the Legislature.

June 18, 1934.

DEFICIT FIRST YEAR OF BIENNIUM MAY BE CARRIED INTO AND
PAID OUT OF APPROPRIATION FOR SECOND YEAR

Dear Sir:

In your letter of the 15th instant you inquire whether invoices dated during the month of June and prior months for merchandise and equipment purchased by the several Departments and State Institutions, may be paid out of the appropriation of the next fiscal year, if their appropriation for this fiscal year has been exhausted.

Section 3 of Chapter 15858, Acts of 1923, provides:

"That any monies appropriated by this Act for a designated period, which at the end of such period remains unexpended or not contracted to be expended, the said unexpended balance may be used for like purposes in the second year of the biennium, but whatever balance remains unexpended or not contracted to be expended at the end of the biennium, the same shall revert to the fund from which appropriated."

This seems to indicate a legislative intent to allow all of the appropriation made for "necessary and regular expenses," or as much thereof as may be necessary to be used in paying the necessary and regular expenses or the several Departments during the biennium. I see no reason why a deficit of the first year of the biennium may not be carried over to and paid from the annual appropriation made for the second year of the biennium; provided, however, the total expenditure for the biennium does not exceed the total appropriation for the biennium, notwithstanding the appropriation is made at a fixed amount annually for the biennium. A deficit could not be lawfully created and carried over, however, beyond the end of the biennium.

This construction applies only to the appropriation for "necessary and regular expenses," and would not apply to that made for Salaries, as there could be no occasion for exceeding the amount appropriated for salaries for any year.

APPROPRIATIONS

December 5, 1934.

PAYROLL OF MEMBERS NATIONAL GUARD AUTHORIZED

Dear Sir:

In reply to yours of the 28th ult. I beg to advise that it is my opinion that the Payroll of Members of National Guard incurred in preserving peace is properly payable out of the special expense appropriation made by the General Appropriation Act of 1933, to-wit: Chapter 15858. There is no special appropriation for "preserving the public peace," but evidently this is simply a matter of bookkeeping by the Military Department itself, and the only guide for the Comptroller is the Appropriation Act of 1933. This makes no subdivisions as to the purpose for which this special expense appropriation may be used.

You will note that by the General Appropriation Act of 1931, Chapter 15719, a special appropriation of \$4,000 for "aiding civil authorities" was provided. I therefore advise that this may be paid from the special expense appropriation as contained in the 1933 Appropriation Act.

It is therefore not necessary to resort to any transfer of funds.

December 19, 1934.

PERSONS WANTED FOR CRIME

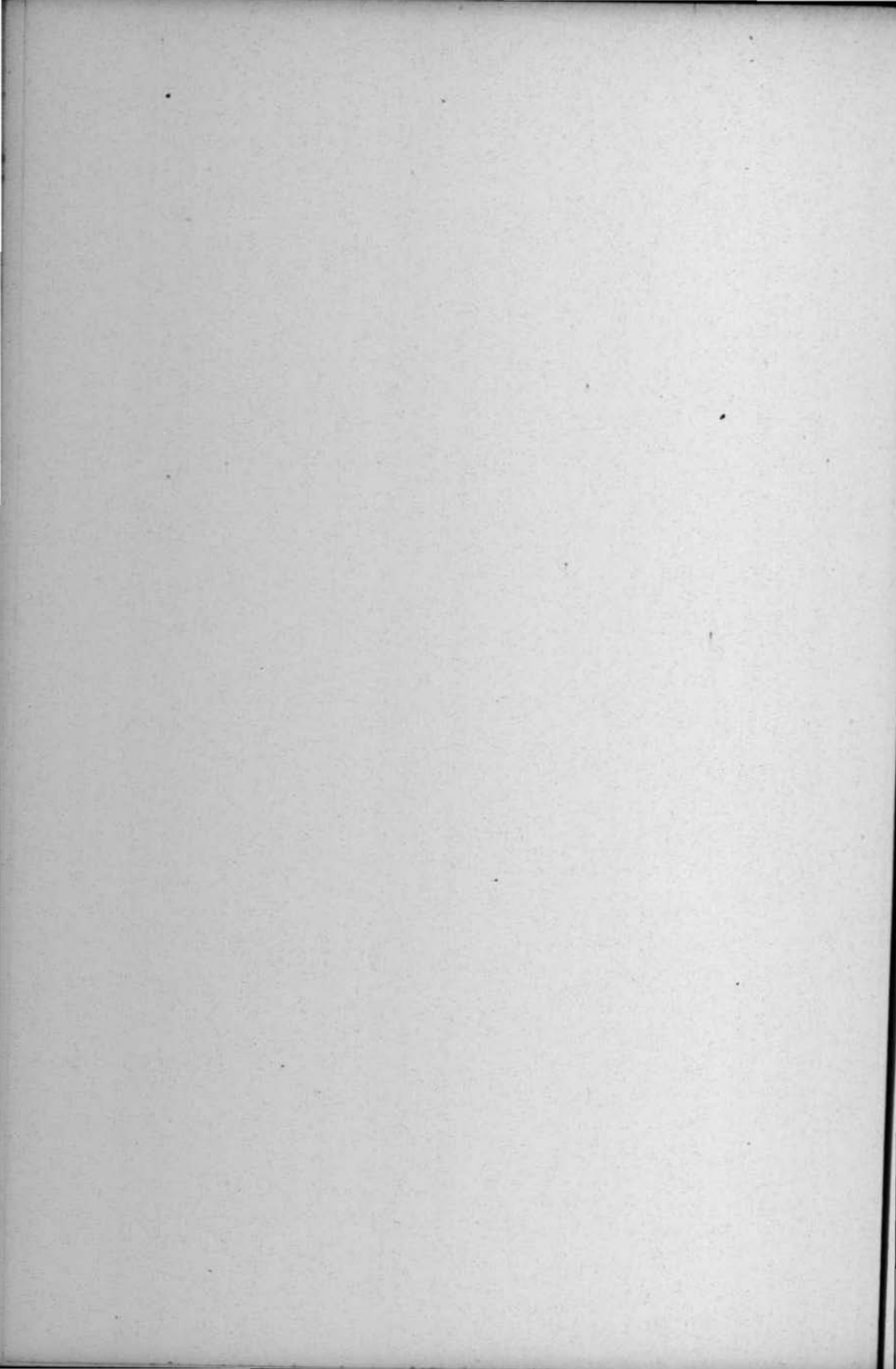
Dear Sir:

Answering your verbal inquiry with reference to claim of \$100.00 by A. J. Caldwell, Deputy Sheriff, Lake County, for reward of \$25.00 each in four cases of conviction on the charge of unlawfully taking timber from State lands, I beg to say that the same may be paid under Chapter 15858, Laws of Florida, Acts of 1933, under the item "Board Commissioners, State Institutions, Incidental Expenses," provided, such rewards were authorized or approved by the said Board. I do not think payment of the same can be made under Chapter 13630, Acts of 1929.

CHAPTER VIII

SCHOOLS

	Page
Section 1. Teachers	397
Section 2. Special Tax School District	403
Section 3. Miscellaneous	415



SCHOOLS**SECTION 1****SCHOOL TEACHERS**

March 1, 1933

**TEACHERS NOT ENTITLED TO PENSION IF THEY HAVE
PROPERTY OR INCOME***Dear Sir:*

This refers to your favor of February 26 and you ask the question of whether or not a teacher who has complied with all other requirements of the teachers' pension law but has securities that may bring an income of ten dollars per month, would be entitled to a pension.

I beg to state that the Statute reads that a person in order to get a pension must be without means of support and there must be proof of this fact when a petition for a pension is presented to the State Board of Education. I doubt if such a person as you mention would be entitled to a pension until this income has been exhausted, and this would also apply to your other question where a person has property but received only one hundred dollars last year. It is my thought that as long as the teacher has property or some source of income, the State Board of Education would not be authorized to grant the teacher a pension.

The purpose of the law is, I feel sure, to grant public aid only when the person applying for such pension is without means or property or means of subsisting.

May 15th, 1933

**SALARIES OF TEACHERS MAY BE PAID FROM FUNDS ACCRUING
DURING SCHOOL YEAR, BUT RECEIVED BY COUNTY
AFTER CLOSE OF SCHOOL YEAR***Dear Sir:*

This refers to your favor of May 6th, relative to payment of teachers for the school year 1932-33.

The State allocation of funds for the schools is distributed some time early in each month for the preceding month. This allocation fund runs from July first to July first under the last appropriation bill. It is my opinion that under the law all funds that have accrued from July first to July first are to be used for the paying of current expenses of teachers during that period of July first to July first. It is my opinion that this is so, even though some of these funds are received after July first. In other words, in your county, some time during the early part of June you will receive the allocation for the month of May, and some time during the early part of July you will receive the allocation for the month of June. Both of these allocations should be used for the payment of teachers

SCHOOL TEACHERS

salaries and current expenses that have accrued up to July first. I take it from past reports that Orange County will probably receive in the early part of June and July allocation funds which accrued prior to July first, and which would be useable for paying present teachers unpaid salaries, an amount approximating \$10,000.00 or more. The local taxes in the district which are actually paid in after July first can be used under the law to pay obligations of teachers for teaching during this last year.

July 6, 1933

**TEACHERS MAY BE PAID OUT OF FUNDS ACCRUING AFTER MAY
31ST FOR SERVICES PERFORMED DURING CURRENT
SCHOOL YEAR**

Dear Sir:

This refers to your favor of June 30, and in reply I beg to state that House Bill No. 356 Chapter 16170 became effective May 31, 1933.

The scholastic year runs from July 1 to June 30 of each year. The State moneys accruing after May 31 are under this act impounded in and become a separate fund to be known generally as teachers' salary fund. All warrants drawn against such moneys can only be drawn for the purpose of paying teachers' salaries in the public free schools of each county for the current scholastic year and for expense incurred in the transportation of pupils in said territory.

There is no question in my mind but that this is a legal and valid law and that such moneys can be so controlled by the State Legislature. As a practical proposition, if you have issued script for salaries during such period, I would suggest that you draw warrants payable to such teachers in the amount due them, and upon delivery of such warrants you take up the script. If a teacher has passed this script on to a third party, this will have to be worked out by the teacher and third party.

July 10, 1933

**SCHOOL BOARD MAY EMPLOY TEACHER WHOSE HUSBAND LIVES
OUT OF STATE IF HUSBAND CLAIMS FLORIDA
AS HIS RESIDENCE**

Dear Sir:

This refers to your favor of July 7, requesting my opinion as to whether or not two of the school teachers employed by your school board come within the residential qualification of the law. I understand the facts to be as follows:

The husband of one of the teachers is in bad health and has gone to an outside State and has acquired some land and is living in that

SCHOOL TEACHERS

State. If the husband went to the other State for the purpose of regaining his health and not for the purpose of establishing his legal home and domicile, his home still would be in Florida, and the fact that he has acquired some land in another State would be immaterial. If the husband should regain his health, I assume he would return to Florida, and I further assume that he has never intended to change his permanent home and domicile, but has only gone to a foreign State for his health. Under these circumstances, it is my opinion that this lady still has her home in Florida and would not be a violation of your school board to employ her.

In the other case you state the husband of the teacher is employed by the railroad and at the present time lives outside of Florida. A citizen does not lose his permanent home or domicile by going to another State to seek employment, so long as he does not make up his mind that the other State is his permanent home or domicile. If this railroad man went to another State to get work and all of the time looks upon Florida as his legal home and domicile, then his wife, in my opinion, would not be prohibited, under the present residential act, from accepting employment, and it would be entirely proper for your school board to employ her.

February 9, 1934.

TEACHERS DO NOT HAVE CONTROL OVER PUPILS OFF OF SCHOOL
GROUNDS EXCEPT WHERE CONDUCT DIRECTLY RELATES
AND AFFECTS THE MANAGEMENT OF SCHOOL

Dear Sir:

I am in receipt of your letter of the 6th inst., making inquiry as to where a teacher's jurisdiction over school children begins and whether a teacher can be held responsible for the conduct of school children on the road to and from school.

In paragraph 4, Section 669, Compiled General Laws of Florida, 1927, every teacher is directed:

"To enforce needful restrictions upon the conduct of the pupils in or near the school house or grounds, avoiding at all times unnecessary severity and measures of punishment that are degrading in their tendency."

I find no statute nor any ruling of our Supreme Court touching the authority of school teachers over school children while traveling between home and school.

Ruling Case Law, Volume 24, page 627, Schools 85, based on decisions from other states and jurisdictions, which I quote below, may contain some suggestions serviceable to you:

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SCHOOL TEACHERS

"85. DISCIPLINARY RIGHTS OF PARENTS AND TEACHERS.—School directors and teachers have no concern with the individual conduct of the pupils wholly outside of the school room and school grounds and while they are presumed to be under the control of their parents. Generally speaking when the school room is entered by the pupil, the authority of the parent ceases, and that of the teacher begins; when sent to his home, the authority of the teacher ends, and that of the parent is resumed. On the other hand it has been held that this authority of a teacher over his pupils is not necessarily limited to the time when the pupils are at the schoolroom, or under the actual control of the teacher. The view has been taken that this authority extends to the enforcement of reasonable rules and requirements even while the pupils are at their homes. The conduct of pupils outside of school hours and school property which directly relates to and affects the management of the school and its efficiency is within the proper regulation of the school authorities. Thus it has been held that rules as to absence and tardiness of pupils are proper. The better rule seems to be that after a child has returned to his home or his parent's control, then the parental authority is resumed and the control of the teacher ceases, and that for all ordinary acts of misbehavior thereafter the parent alone has the power to punish, but where an offense committed at home has a direct and immediate tendency to injure the school and bring the schoolmaster's authority into contempt, he has the right to punish the scholar for such acts when he comes to school again. So it has been held that a rule of a school board forbidding pupils to play football under the auspices of the school is not unreasonable or in excess of the authority of the board, although applied to conduct on holidays and away from the school grounds. The authority of school officials assuredly extends into the twilight zone between the school and the home. The misconduct of pupils on the way to school, or on going home from school, is properly within the scope of the power of school officers. So a school board may properly make and enforce a rule that scholars shall go directly to their homes after school hours. The liberty of neither the children nor parents is at all unlawfully restrained by this rule and its reasonable enforcement. A person teaching a private school may say on what terms he or she will accept scholars, and may demand, before receiving a scholar to be taught, that the parents shall surrender so much of his or her parental authority as not to allow the scholar during the term to attend social parties, balls, theaters, etc., except on pain of expulsion. This would be a matter of contract, and no one has a right to send a scholar to such a school except on the terms prescribed by those who teach it. A letter sent to school authorities by the father of a pupil containing charges of impropriety by another pupil on the

SCHOOL TEACHERS

school grounds is qualifiedly privileged. Actual malice must be proved before there can be a recovery in libel."

The duties now resting upon this office under the Constitution and laws of the State make it practically impossible to render opinions to other than State officers.

March 9, 1934.

**COUNTY NOT LIABLE FOR INTEREST ON PAST DUE SALARY OF
TEACHERS**

Dear Sir:

Replying to your favor of March 7th., in which you ask to be advised whether or not your School Board can legally pay interest on past due teachers' salaries, permit me to say: In the case of Duval County vs. Charleston Engineering Company, 134 So. 509, the Supreme Court of Florida said:

"It is a general rule that in the absence of statute or express contract, the county is not liable for interest on its obligations."

Teachers are employed by the School Board on contract. In the absence of a specific provision in the contract and where there is no statute authorizing the payment of interest, it is my opinion that the School Board could not legally pay interest on teachers' salaries which are past due. The opinion referred to above was rendered April 28th. 1931, and we do not know of an opinion rendered subsequently by the Supreme Court which alters the rule stated therein.

August 15, 1934.

**PAYMENT OF INTEREST BEARING NOTES OR CERTIFICATES OF
INDEBTEDNESS TO TEACHERS FOR PAST DUE SALARIES
UNAUTHORIZED**

Dear Sir:

Answering your letter of the 12th inst., I beg to say I do not know of any statutory authority for Boards of Public Instruction to issue interest bearing notes or certificates of indebtedness to teachers in payment of past due salaries. See Section 566, Compiled General Laws of Florida, 1927, with reference to authority of the Board of Public Instruction to borrow money.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SCHOOL TEACHERS

September 7, 1934.

MARRIED WOMEN NOT PROHIBITED FROM TEACHING

Dear Sir:

Answering your letter of the 5th inst., I beg to say there is no law prohibiting married women from teaching in the public schools of Florida. You probably have reference to the case of *State ex rel. Pittman, et al. vs. Barker, et al.*, decided by our Supreme Court on February 5, 1934, and reported in 152 So. 682. That case involved the construction of Section 710, Compiled General Laws of Florida, 1927, which provides that the Trustees of a Special Tax School District shall have the power to nominate to the County Board of Public Instruction teachers for all schools within such Special District.

It appears in the above mentioned case that the Trustees of a Special Tax School District nominated certain women for teachers and that the Board of Public Instruction rejected such nominations for the reason that the teachers were married women. The Court held that such reason was not sufficient ground for rejection of nominees.

December 5, 1934.

TEACHERS MUST BE BONA FIDE RESIDENTS OF FLORIDA FOR
TWO YEARS NEXT PRIOR TO TIME OF EMPLOYMENT
TO BE ELIGIBLE

Dear Sir:

I am in receipt of your letter of the 3rd inst., stating that you lived in Florida 9 consecutive years, taught in the high schools of the State for 6 years of that time and obtained a Teacher's State Life Certificate; that 4 years ago you left Florida and went to Kansas and that it is now imperative for you to return to your profession. You make inquiry if you are eligible for a position in Florida.

In reply your attention is called to Chapter 16183, Acts of 1933, prescribing residence qualification of all State and County employees, which includes public school teachers. Section 1 of said Act reads as follows:

"From and after the passage of this Act all persons employed to work for the State of Florida or for any county of the State, shall be bona fide residents of the State for two years next prior to such employment, except only where after due diligence no person can be found in the State possessing the required qualifications necessary to the particular employment."

The foregoing Chapter has never been passed upon by our Supreme Court, but will have to be considered valid and binding unless and until the Courts should at some time declare the same invalid.

SCHOOLS

SECTION 2

SPECIAL TAX SCHOOL DISTRICT

January 25, 1933.

**FUNDS CANNOT BE USED TO PAY BILLS OF ANOTHER DISTRICT
UNLESS ALL FUNDS ARE PLACED IN ONE ACCOUNT**

Dear Sir:

Replying to your letter of January 21st, in which you ask to be advised whether or not the funds of one special tax school district may be used to pay the current bills of another district which is temporarily without funds, permit me to say there is no statutory authority for the funds of one district to be used to pay the bills of another district.

However, in some counties it is done, where all of the district funds are kept in one account in the bank and the receipts and disbursements are kept separately on the superintendent's books. The bills of the districts having a deficiency of funds are paid, and the district account on the superintendent's books merely shows an overdraft.

This cannot be done where separate accounts for each district are kept by the depository.

April 28, 1933.

**FUNDS NOT AUTHORIZED TO BE USED FOR TRANSPORTING
PUPILS INTO ANOTHER SCHOOL DISTRICT**

Dear Sir:

I am in receipt of your letter of the 25th instant, enclosing communication from Hon. C. P. Finlayson, County Superintendent of Public Instruction of Jackson County, under date of March 23rd, together with petition from citizens in Special Tax School District No. 54 objecting to using funds of the Special Tax School District to transport pupils from such district to schools in other parts of the county. You request my opinion as to whether the Board of Public Instruction of Jackson County is acting within its legal rights in using Special Tax School District No. 54's funds for transporting pupils in that district to other schools in the county.

In reply I beg to call your attention to Section 10 of Article XII of the State Constitution which provides for the levying and collection of the district school tax for the exclusive use of public free schools within the district.

I beg to call your further attention to Section 11 of Article XII of the State Constitution which provides that the funds raised by Section

SPECIAL TAX SCHOOL DISTRICT

10 may be expended in the district where levied for building or repairing school houses, for the purchase of school libraries and text books, for salaries of teachers or for other educational purposes so that the distribution among all the schools be equitable.

However desirable it may seem to use funds, as above set out, it appears that the above mentioned provision of the State Constitution contemplates that the school district funds shall be used only for the exclusive use of public free schools within the district.

April 28, 1933.

DEBTS TO BE APPROVED BY BOARD PUBLIC
INSTRUCTION OF COUNTY

Dear Sir:

Your letter of the 10th instant to Hon. David Sholtz, Governor, with reference to Trustees of Special Tax School Districts borrowing money, has been referred to this office.

In reply I beg to call your attention to Section 717, Compiled General Laws, which provides that no debt shall be created for a Special Tax School District without the approval of the County Board of Public Instruction.

May 25, 1933.

VOTING

Dear Sir:

Replying to your letter of May 23rd, in which you make inquiry regarding the qualification of electors in special tax school district elections, permit me to say the Legislature now in session has passed House Bill No. 725, which is now at law, and the same reads as follows:

"That all voters residing within any special tax school district in the State of Florida, who paid a tax on real or personal property and voted in the General Election next preceding the date of holding any election pertaining to such special tax school district, shall hereafter be entitled to vote in such last mentioned election."

I construe the Act to mean that if a qualified elector has in recent years paid a tax on real or personal property lying within the special tax district, and there appears on the tax roll at this time real or personal property located in the special tax district assessed against the elector, and he voted in the last General election, or was qualified to vote in such election, then he is qualified to vote in a special tax school

SPECIAL TAX SCHOOL DISTRICT

district election to be held this year, or in any special tax school district election to be held at any time prior to the next General Election.

July 6, 1933.

**ILLEGAL FOR TRUSTEES TO MAKE CONTRACT FOR
TRANSPORTING PUPILS**

Dear Sir:

In response to your verbal request for an opinion on whether or not it is legal for a trustee of a special tax school district to be a contractor with the county school board for transporting pupils to the various schools of the county, permit me to say:

Under date of May 4th, 1907, a former Attorney General, W. H. Ellis, now a Justice of the Supreme Court, expressed the opinion that it was against public policy for either members of the Board of Public Instruction or trustees of special tax school districts to be parties to contracts relating to the disposition of school funds in which such members would have an interest as contractor adverse to public interest.

On August 13, 1928, Honorable Fred H. Davis, then Attorney General and now Chief Justice of the Supreme Court, quoted the opinion of Justice Ellis with approval, and expressed the opinion that a contract between a trustee and the school board for the transportation of pupils would be against public policy and illegal.

In view of these expressions by my predecessors in office, and because I feel that such contracts are against public policy, I concur in their view that such contracts are illegal.

August 22, 1933.

**ONE-FOURTH OF THE VOTERS OF EACH DISTRICT NECESSARY
TO SIGN PETITION TO ANNEX ADDITIONAL
TERRITORY TO ANY DISTRICT**

Dear Sir:

Replying to your letter of August 17th, permit me to say I am of the opinion that a petition signed by one-fourth of the qualified electors who pay a tax on real or personal property and are resident in the territory to be taken into the special tax school district, should be filed with the board of public instruction as provided in Section 701.

The question of whether or not there should also be a petition filed by one-fourth of the qualified electors resident of the special tax school district does not appear to have been settled either by the statute or by any Supreme Court opinion that I have been able to find. I do find that Section 748, Compiled General Laws, relative to consolidation of special

SPECIAL TAX SCHOOL DISTRICT

tax school district, requires petitions containing the names of one-fourth of the voters of each district.

Therefore, I am inclined to believe that where a district proposes to annex certain territory, one-fourth of the qualified voters living in the district, and one-fourth of the qualified voters living in the district to be annexed, should file the petition as required. At least, this would be safe.

December 6, 1933.

PURCHASE OF OUTSTANDING TIME WARRANTS OF BOARD OF
PUBLIC INSTRUCTION WITH SPECIAL TAX SCHOOL
DISTRICT FUNDS, UNLAWFUL

Dear Sir:

This is in response to your inquiry of December 1, 1933, in which you ask for my opinion as to whether or not it would be legal to use moneys now in the sinking funds of the several special tax school districts of Jackson County, with which to purchase outstanding time warrants issued by the board of public instruction of Jackson County some years ago.

I understand from your letter that these time warrants bear 8% interest, and are payable \$2,000 annually, and that you have been offered \$13,000 worth of the same at a flat price of \$750 per \$1,000 warrant, including accrued interest, and that such would constitute a saving of nearly \$5,000 to the county.

Your plan is to use cash moneys which are now in the sinking fund of the several districts, with which to purchase these warrants.

I have given this matter most mature consideration, and have come to the conclusion that these sinking fund moneys cannot be used for such purpose.

These time warrants were evidently issued pursuant to the provisions of Chapter 8548, Acts of 1921, now appearing as Sections 569, et seq. Compiled General Laws of 1927, and evidently the unmatured principal payments will extend over a period of approximately nine years from this date.

Section 736, Compiled General Laws of 1927, lays down the restrictions governing the investment of sinking funds collected for the retirements of such district bonds, and it provides that the same may be invested

"in the bonds of another special school tax district of the same county: provided, said bonds shall be purchased at par. And the board shall have further right to invest the sinking fund of any district in any municipal or county bonds of the county under its jurisdiction: provided, that the said bonds shall be of such date and maturity that they will mature on or before the date

SPECIAL TAX SCHOOL DISTRICT

of the maturity of the district's bonds, with whose sinking fund they have been purchased; and provided, further, that it shall be the duty of the county board of public instruction, before investing the sinking fund as herein provided, to secure the opinion of the Attorney-General of the State of Florida, approving the legality and validity of the bonds to be so purchased, and no bonds shall ever be purchased by any board which have not been entirely and fully approved by the opinion of the Attorney General as herein provided: Provided, always, that the board shall have the right to keep the sinking fund on deposit earning the rate of interest agreed upon until such time as in their judgment they may be able to invest it in bonds to better advantage as herein provided for."

It is thus seen that these funds may be invested only in the bonds of another special school tax district of the same county; or in municipal or county bonds of the same county; or kept on deposit at interest until the Board is able to invest it in such bonds.

I regret that I am unable to approve this transaction, which seems to be of advantage to your county, but I am necessarily bound to follow the provisions of law governing the transaction.

December 12, 1933.

PURCHASE OF BONDS OF SPECIAL TAX SCHOOL DISTRICT BY
BOARD PUBLIC INSTRUCTION, UNLAWFUL

Dear Sir:

This is in response to your communication of December 1, 1933, in which you ask my opinion in accordance with Section 736, Compiled General Laws of 1927, as to the validity of the proposed purchase of certain bonds of special tax school districts as an investment of sinking fund moneys by the county board of public instruction.

I sincerely regret that I cannot approve the validity of the proposed purchase. My interpretation of said Section 736 is that it authorizes the investment of sinking fund moneys in bonds of another district of the same county, and that the investment so made must be in an ascertained and particular bond, and cannot be in a pool of bonds represented by what amounts to participating certificates or other interests therein.

If there is any manner in which this matter can be worked out, whereby the funds in the sinking fund of a particular district can be invested in and thereafter represented by a certain bond of another district (assuming, of course, the legality, and validity of the bond), I shall be more than happy to approve such investment; but I cannot approve a pooling of these bonds and the investment of such funds in a security represented only by an allotment or allocation of an interest in the pool.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SPECIAL TAX SCHOOL DISTRICT

Again regretting my inability to approve the proposed transaction as set forth in your letter, I am

December 22, 1933.

SINKING FUND OF SPECIAL TAX SCHOOL DISTRICT MAY BE USED
TO PURCHASE BONDS OF ANOTHER DISTRICT BUT
NOT BONDS OF SAME DISTRICT

Dear Sir:

You will note that under Section 736, Compiled General Laws of 1927, the county board of public instruction has power at all times to invest the sinking fund collected for the retirement of any bonds of *any district* in the bonds of *another* special tax school district of the same county.

I interpret this to mean that the sinking fund of a special tax school district cannot legally be invested in its own bonds. I note that with reference to special tax school district No. 6, you intend to purchase with funds of that district bonds of the same district.

It therefore is with much regret that I advise that insofar as the transaction involving district No. 6 investing its funds in its own bonds is concerned, I cannot approve the same. Otherwise, the balance of the transaction is valid.

Will you please ascertain whether it cannot be arranged to carry out this transaction without the defect above noted, and I assure you of my cooperation in every respect to the end that you may be able to successfully conclude the proposed investments.

February 8, 1934.

PARTIAL PAYMENT ON MATURED BOND MAY BE MADE PRO RATA
ON ALL MATURED BONDS

Dear Sir:

This is in answer to yours of February 1st, in which you ask whether or not partial payment may be made upon a bond issued by a special tax school district, there being funds sufficient to make such partial payment.

I am of the opinion that such partial payment may be made provided that such partial payment is made on all the bonds of the issue involved, but that it is not proper to prefer one creditor over another, or one bondholder over another, without such creditor or bondholder impounding the funds through mandamus proceedings.

The safest method of indicating the partial payment is to impound the bonds at the time of the partial payment with the issuance of a trust certificate thereon.

SPECIAL TAX SCHOOL DISTRICT

March 21, 1934.

INSURANCE AND MAINTENANCE OF BUILDINGS PAYABLE FROM
SPECIAL TAX SCHOOL DISTRICTS' FUNDS EVEN THOUGH
TITLE IS VESTED IN BOARD OF ADMINISTRATION*Dear Sir:*

I am in receipt of your letter of the 19th instant, calling my attention to Chapter 16170, Laws of Florida, Acts of 1933, and Section 709 (1) Compiled General Laws of Florida, 1934 Supplement, providing for Trustees of Special Tax School Districts to convey to the Board of Public Instruction all property in the District. You state that some question has arisen as to whether payment for insurance and maintenance of such school buildings so conveyed to the Board of Public Instruction should be made from the General School Funds of the County or from the Special Tax School District in which the building is located.

In reply I beg to say I agree with your view that while the legal title to such buildings is in the Board the beneficial use is for the District and District Funds should still be used for the payment of insurance and upkeep on the buildings.

April 18th, 1934

ELECTION IN SPECIAL TAX SCHOOL DISTRICT FOR PURPOSE OF
VOTING IN ISSUANCE OF BONDS MUST HAVE PETITION
SIGNED BY 25% OF QUALIFIED ELECTORS UNLESS
DISTRICT IS LOCATED IN CITIES HAVING
25000 POPULATION OR MORE*Dear Sir:*

Replying to your favor of April 16th, permit me to say that Section 720 of the Compiled General Laws of 1927, reads as follows:

"Whenever the residents of a Special Tax School District in any county in this State shall desire the issuance of bonds by said Special Tax School District for the purpose of acquiring, building, enlarging, furnishing, or otherwise improving buildings or school grounds, or for any other exclusive use of the public free schools within any such Special Tax School District, they shall present to the County Board of Public Instruction of the county in which the said District is located a *petition signed by not less than 25%* of the duly qualified electors residing within the said Special Tax School District, setting forth in general terms the amount of the bonds desired to be issued and the purpose thereof, and that the proceeds derived from the sale of such bonds shall be used for the purposes set forth in the said petition."

SPECIAL TAX SCHOOL DISTRICT

Under the provisions of the statute, in Special Tax School Districts located wholly or partially in cities of 25,000 population, or more, according to the last Federal Census, "the petition may be dispensed with" etc. You will note that in most districts a petition signed by 25% of the qualified electors of the district must be presented to the Board of Public Instruction.

You ask to be advised whether or not a person who registered but who has failed to pay poll taxes would be eligible to sign the petition, and in answer I now say that a person who has not paid poll taxes as required by law is not eligible.

You ask to be advised whether or not you could use the registration list now being prepared in finding the qualified electors of the Special Tax School District, and in reply permit me to say, I think that the names which appear on the petition should be qualified electors at the time the petition is presented to the Board of Public Instruction. The law requires the petitioners to be qualified electors. As you know a person might have been a qualified elector two years ago, and may not be a qualified elector at the present time.

June 13, 1934

BOARD MAY REJECT TEACHER NOMINEES OF TRUSTEES OF
SPECIAL TAX SCHOOL DISTRICT

Dear Sir:

On yesterday I wrote you in reply to your letter of the 11th instant, with reference to the authority of the Board of Public Instruction to reject nominations of teachers by Special Tax School District Trustees. Your attention was called to Section 710, Compiled General Laws of Florida, 1927, and I quoted that part of the Section pertaining to your inquiry. I then made the following observation:

"You will note that the authority of the Board to reject nominations is not qualified or limited but it is assumed that such Boards will exercise their authority for the best interest of the school."

Since writing the above, I have read a recent decision of our Supreme Court in the case of State ex rel. Pittman vs. Barker, 152 So. 682, decided Feb. 5th, 1934.

The Court in that case had under consideration the above mentioned Section and used this language in the body of their opinion:

"The Board of Public Instruction may reject the nominee of the Trustees, but our view is that such rejection must be reasonably exercised and must be grounded on some dereliction in statutory or other qualification."

The opinion of the Supreme Court should be followed by your Board.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 411
SPECIAL TAX SCHOOL DISTRICT

June 19, 1934

TEACHERS MAY NOT BE REJECTED BY BOARD SOLELY ON
GROUNDS OF COUNTY RESIDENCE

Dear Sir:

This is in response to your communication of the 18th instant, wherein you ask whether or not a county board of public instruction may reject teachers nominated by the trustees of a special tax school district upon the sole ground that such teachers are not residents of the County.

I call your attention to the recent case of *State ex rel Pittman vs Barker*, decided February 5, 1934, reported in 152 So. 682, wherein it was held that a county board could not reject teachers nominated, upon the sole ground that they were married women, the Court saying:

"In view of this state of the law, we are impelled to the conclusion that the nomination of the trustees must mean something more than an empty gesture to be cast aside at the caprice of the board of public instruction.

"The board of public instruction may reject the nominee of the trustees, but our view is that such rejection must be reasonably exercised and must be grounded on some dereliction in statutory or other qualification."

It is therefore my opinion that under this decision a county board of public instruction may not reject the nomination of teachers by trustees of a special tax school district, solely upon the ground that such teachers are not residents of the County.

June 22nd, 1934

REVISION OF BOUNDARIES OF SPECIAL TAX SCHOOL DISTRICT
MAY BE MADE, BY BOARD OF PUBLIC INSTRUCTION, BUT
MUST BE SUBMITTED TO ELECTORS OF DISTRICT
AFFECTED

Dear Sir:

Replying to your favor of June 19th, on the above subject, I beg to advise that it is my opinion that under the provisions of Section 703 of the Compiled General Laws of 1927, the Board of Public Instruction of a County, may, by complying with the provisions of the statutes, revise a Special Tax School District to the extent provided for by Section 703, and such revision will be effective. However, it appears that the statute requires the question to be submitted to the electors of the District affected at the next ensuing Election for Trustees and assessment of millage.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SPECIAL TAX SCHOOL DISTRICT

July 20, 1934

NOMINATION OF TRUSTEES MAY BE MADE BY TRUSTEES
SPECIAL TAX SCHOOL DISTRICT

Dear Sir:

I am in receipt of your letter of the 18th inst., with reference to nomination of school teachers by trustees of Special Tax School Districts under provisions of Section 710, Compiled General Laws of Florida, 1927. Section 710 provides that trustees of Special Tax School Districts shall have the power to nominate to the County Board of Public Instruction teachers for schools within such Special District, provided that no person be nominated for teacher who does not hold an unexpired teacher's certificate or one that will not remain in full force for the term of the school. Under said Section, the Board of Public Instruction has the right to reject any teacher nominated, and in case the second nomination of a teacher be not ratified, the said Board shall then proceed on its own motion to fill vacancies in the teaching force in any school in such District.

This statute was passed on by our Supreme Court in the case of *State ex rel Pittman versus Barker*, decided February 5, 1934, and reported in 152 So. 682. In the body of said opinion we find this language:

"The Board of Public Instruction may reject the nominee of the trustees, but our view is that such rejection must be reasonably exercised and must be grounded on some dereliction in statutory or other qualification."

The above decision has reference only to the respective powers of the trustees of Special Tax School Districts and the Board of Public Instruction in the matter of nomination of teachers. Such opinion has nothing to do with the subject of your inquiry regarding the voice of the people being considered in such appointments. As to such inquiry, I beg to say that, under the law, appointment of school teachers for Special Tax District Schools is vested in the Board of Public Instruction subject to the right of nomination by the trustees of such District under the provisions of Section 710, above mentioned, as construed by our Supreme Court in the above mentioned case of *State ex rel Pittman versus Barker*. While such authority is vested in the above named officers, I may say that in my opinion as a general proposition the wishes of the school patrons should be given due consideration, and that nomination of teachers should be made in accordance with the wishes of the school patrons unless, in the judgment of the school trustees, the best interests of the school would be conserved by making other nominations.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 413
SPECIAL TAX SCHOOL DISTRICT

September 28, 1934.

BOARD OF PUBLIC INSTRUCTION UNAUTHORIZED TO REDUCE
MILLAGE UNDER AMOUNT VOTED IN SPECIAL TAX SCHOOL
DISTRICTS; CERTAIN EXCEPTIONS

Dear Sir:

In your letter of September 26th, you request my opinion as to the authority of a County Board of Public Instruction "to reduce the millage in a special tax school district to a figure lower than that voted by the free holders of such district."

The number of mills of special tax school district taxes to be levied each year is determined by an election which is held biennially within the district. See Section 708, Compiled General Laws of Florida, 1927.

It is my opinion that the Board of Public Instruction of a County, except as hereinafter set forth, does not have authority "to reduce the millage in a special tax school district to a figure lower than that voted by the free holders of such district." This does not apply to Counties having a population of more than 10,660 and less than 12,000, as the County Board of Public Instruction in such Counties has authority to make such reductions upon a determination by the Board that it is not necessary to keep the millage at the number of mills voted for under the provisions of Section 708, Compiled General Laws of Florida, 1927. See Chapter 15,702, Laws of Florida, Acts of 1931, the same being Section 708 (1), Compiled General Laws of Florida, 1934 Supplement.

November 22, 1934.

QUALIFICATIONS OF DISTRICT TRUSTEE; MUST BE QUALIFIED
ELECTOR; FULL PARDON REMOVES DISQUALIFICATION

Dear Sir:

I acknowledge receipt of your letter of the 21st instant, to which is attached a letter from Mr. _____ of Baldwin, Florida, dated November 19, 1934, which relates to the qualifications for holding the office of District School Trustee.

The first question is whether a person under sentence for malfeasance in office and elected while not a registered voter, can legally hold such office. Malfeasance in office is cause for removal of an officer, provided it is committed during the term for which he is removed. To be qualified to hold office one must be a qualified elector in the county or district, and to be a qualified elector one must be registered therein.

Section 3 of Article XII of the Constitution of Florida empowers the State Board of Education to remove school district trustees for cause.

The next question is as to the effect of a pardon on the right of a person to hold office. A full pardon granted by the Pardon Board restores full citizenship, and removes the disqualification of an elector as fully as if one had never been convicted of a disqualifying offense.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SPECIAL TAX SCHOOL DISTRICT

December 5, 1934.

SPECIAL TAX SCHOOL DISTRICT MAY EMPLOY ATTORNEY WITH
CONSENT OF THE BOARD OF PUBLIC INSTRUCTION

Dear Sir:

Answering your letter of the 1st instant, I beg to say I know of no general statute specifically providing for the employment of an attorney by the Trustees of Special Tax School Districts.

I note your reference to Section 717, Compiled General Laws of Florida, 1927, which provides that the Trustees of any special school district shall be a corporation and may hold property, sue and be sued, and perform other corporate functions. This Section would indicate that Trustees of Special Tax School Districts might engage an attorney for the purpose of suits, but your attention is called to the proviso in said Section reading as follows: "Provided, that no debt shall be created without the approval of the County Board of Public Instruction." Under this proviso it would appear that no contract for the payment of an attorney could be made without the approval of the Board of Public Instruction.

December 11, 1934.

STATE BOARD OF EDUCATION MAY REMOVE TRUSTEE OF
SPECIAL TAX SCHOOL DISTRICT FOR CAUSE

Dear Sir:

This acknowledges yours of the 8th instant, asking for my opinion as to whether or not the State Board of Education has jurisdiction in the matter of a complaint and petition by patrons of a special tax school district, requesting the removal of the trustees thereof.

Under sub-paragraph 3rd of Section 755, Compiled General Laws of 1927, the State Board of Education is directed and empowered to entertain and decide upon questions and appeals referred to them by the State Superintendent of Public Instruction on any matter of difference or dispute arising under the operation of law.

Under Article 12, Section 3, of the Constitution, the State Board of Education is given power to remove any subordinate school officer for cause, upon notice to the incumbent.

In the case of *State ex rel Landis vs. Blake*, 110 Fla. 178, 148 So. 566, the Supreme Court held that the trustee of a special tax school district is a subordinate school officer within the meaning of the above mentioned constitutional provision. I am therefore of the opinion that in the event you refer this matter to the State Board of Education, such Board will have jurisdiction in the premises.

Before such removal takes place, however, notice must be given to the incumbent, and the power to remove must be exercised only for cause.

SECTION 3

MISCELLANEOUS

January 25, 1933.

TAX ANTICIPATION NOTES AND ASSIGNMENT OF JUDGMENTS
PRECLUDED AS SECURITIES FOR BANKS HANDLING
PUBLIC FUNDS*Dear Sir:*

Replying to your request of the 25th instant for an opinion as to whether tax anticipation notes and assignment of judgments come within the law regulating the kind of securities required of banks in qualifying as county and school depositories under Section 2405 of the Compiled General Laws of Florida 1927, I beg to advise that in my opinion such instruments are not included within the purview of said statute.

Banks to qualify as county depositories are required to execute and deliver a surety bond issued by some company duly authorized to do business in this State or make satisfactory deposit to the credit of the county of federal, state, county or municipal bonds in an amount to be determined by the board and approved both as to amount and validity by the Comptroller.

I do not think that tax anticipation notes or assignment of judgments was intended by the Legislature to be included within the term "bonds" as used in said Act.

January 31, 1933.

ATTENDANCE OFFICER MUST BE ELECTED BY THE PEOPLE
OR APPOINTED BY THE GOVERNOR*Dear Sir:*

I am in receipt of your letter of January 23, relative to selection of school attendance officers under Section 688, Compiled General Laws of 1927.

In the case of *State ex rel. vs. Board of Pub. Inst.*, 98 Fla. 66, 123 So. 540, the Supreme Court held that said Section 688 in providing for appointment of school attendance officers by the Board of Public Instruction was in violation of Section 27, Article III of the State Constitution, which provides for the election by the people or appointment by the Governor of all State and County officers.

In the case of *State ex rel. vs. Apalachicola Northern R. Co.*, 81 Fla. 394, 88 So. 310, the Supreme Court held that "An administrative

MISCELLANEOUS

board cannot legally confer upon its employees authority that under the law may be exercised only by the board or by other officers or tribunals." This decision had reference particularly to the making of rules and regulations by the State Plant Board and was to the effect that the making of such rules and regulations could not be delegated to employees.

In view of the above, it is clear that a school attendance officer given sovereign duties to perform must be elected by the people or appointed by the Governor.

I see no reason why a County Superintendent of Public Instruction may not by statute, be made the school attendance officer also, but under the last above mentioned Supreme Court ruling deputies or employees under the Superintendent would have no authority to exercise powers that under such a law could be exercised only by the Superintendent.

February 9, 1933.

SUIT CANNOT BE MAINTAINED AGAINST BOARD OF PUBLIC INSTRUCTION FOR NEGLIGENCE OF BUS DRIVER; BOARD NOT AUTHORIZED TO USE FUNDS FOR PAYMENT OF MEDICINE AND HOSPITAL BILLS

Dear Sir:

Replying to your favor of the 7th instant in which you state that a pupil in one of the schools of your county while en route to school fell from a school bus, that the wheel of the bus passed over and broke the pupil's leg, and that the father of the pupil is demanding that the Board of Public Instruction pay medical and hospital bills, and in which you ask to be advised whether or not the Board could legally pay such bills, and whether or not the Board of Public Instruction could be sued in connection with this matter, permit me to say:

There is no statute which would authorize the Board of Public Instruction to pay for the services of a physician and/or hospital bills. The Board of Public Instruction cannot disburse the county school funds in its charge, except for purposes designated by law. The county school fund is a county fund, the moneys in which are set apart for a special purpose, viz: the maintenance and support of the public free schools. The disbursement of the funds is a duty or trust permitted to the County Board of Public Instruction, which Board is prohibited by the Constitution from disbursing the money in such fund for any other purpose than the maintenance and support of the public free schools. Of course, a suit could be entered against the Board, but a suit against the Board of Public Instruction based on the cause of action under consideration could not, in my opinion, be successfully maintained. A Board of Public Instruction may be sued in appropriate action *ex contractu* upon obligations lawfully incurred, the payment of which would not involve an

MISCELLANEOUS

unauthorized disbursement of the county school fund under Section 9 of Article XII of the Constitution, but I do not think a suit could be successfully maintained against the Board for damage caused by the negligence of a school bus driver.

Your letter causes me to wonder if it would not be advisable for Boards of Public Instruction to require school bus drivers to have an indemnity bond covering accidents of this kind.

February 17, 1933.

SUPERINTENDENT TO BE CUSTODIAN OF OFFICIAL SEAL

Dear Sir:

Replying to your letter of February 14th, permit me to say it is my opinion that the official seal of the board of public instruction of a county should be kept in the office of the county superintendent of public instruction, where the board holds its meetings, and that the chairman of the board and the former superintendent of public instruction have no authority to use the seal on records, documents, warrants, etc., unless authorized to do so by a majority of the board of public instruction.

BOARD OF PUBLIC INSTRUCTION MAY EMPLOY CLERK IN
OFFICE OF COUNTY SUPERINTENDENT EVEN THOUGH
EMPLOYEE NOT SATISFACTORY TO HIM

Dear Sir:

Replying to your letter of February 24th, in which you request opinion as to whether the board of public instruction of a county has authority to employ a clerk in the office of the county superintendent, regardless of whether or not the person is satisfactory to the county superintendent, permit me to say:

Section 581 of the Compiled General Laws prescribes the duties of the county superintendent of public instruction. You will find that the 11th paragraph of this section requires the county superintendent of public instruction to act as secretary of the county school board, but I do not find that he has the power to employ, or has any voice in the employment, of clerks in the office of the board of public instruction.

In the case of *Clifton vs. State*, 76 Fla. 244, 79 So. 707, the Supreme Court of Florida said that the county superintendent of public instruction has no authority to contract for the county board of public instruction without the latter's express authority to pay a stenographer in his office for services rendered in its behalf, that will create an

MISCELLANEOUS

obligation on the part of the county board to pay such expense out of the County School Funds.

By reference to Section 2295 of the Compiled General Laws of 1927, you will find that it is the duty of the county board of public instruction and the superintendent to make an accurate report of all the receipts, disbursements, unpaid warrants, and assets and liabilities, upon forms to be prescribed by the State Comptroller.

It appears that the board of public instruction of a county is held responsible for not only the county school funds and the proper expenditure thereof, but primarily for the accounts and financial statements or reports, and therefore, under the authority vested in the board of public instruction, to do whatever in their judgment is for the best interest of the school affairs of the county, it is my opinion that the board of public instruction of the county may employ a clerk to keep the accounts of said board of public instruction, and that it is not necessary for them to have the consent or approval of the superintendent of public instruction.

However, inasmuch as the superintendent of public instruction occupies the office and exercises a general supervision over the accounts and financial records of the board of public instruction, it is of course desirable, and would seem to be entirely proper, that the board of public instruction should not have in the office as clerk one who is incompetent or personally objectionable to the county superintendent.

June 15, 1933.

BOARD OF PUBLIC INSTRUCTION SHALL EMPLOY EMPLOYEES IN
OFFICE OF COUNTY SUPERINTENDENT

Dear Sir:

I am in receipt of your letter of the 14th instant, advising that the clerical work in your office is much too heavy for one person to perform in addition to other duties, and that the board of public instruction has refused to comply with your request to provide clerical help. You make inquiry as to the duties for which you and the board are respectively responsible.

Section 6 of Article VIII of the State Constitution provides for the election of a county superintendent of public instruction, and also provides that his powers, duties and compensation shall be prescribed by law.

Section 559, Compiled General Laws of 1927, provides that the county superintendent of public instruction shall be the secretary of the board.

Paragraph 11 of Section 581, Compiled General Laws of 1927, provides that the county superintendent of public instruction, acting as secretary of the county school board, shall make and forward monthly a certified copy of the tax collector's monthly lists of persons who have paid their poll taxes, to the State Superintendent of Public Instruction.

MISCELLANEOUS

These are the only statutes found pertaining to the duties of the county superintendent of public instruction as secretary of the board of public instruction.

Sections 581, 582 and 583, and Sections 2295 to 2301, provide specific duties of the superintendent of public instruction.

Sections 561, 562, 606 and 2295 to 2301, provide specific duties for the board of public instruction.

Since the law fails to define the duties of the superintendent of public instruction as secretary of the board, except in paragraph 11 of Section 581 above mentioned, it is to be assumed that his duties as secretary are such duties as are usually performed by secretaries of boards, among which would be the duty of attending board meetings and keeping minutes of the proceedings of the board of public instruction. The law places certain responsibilities upon the board of public instruction, such as auditing and paying accounts, keeping accurate accounts and making itemized reports of moneys received and disbursed, making monthly financial statements to the clerk of the circuit court, preparing itemized estimates for school purposes, and examining the books and records of the tax collector relating to the collection of poll taxes.

These duties necessarily require clerical work, which in my opinion may and should be performed by the superintendent of public instruction as secretary of the board, when the same may reasonably be performed by him in connection with his many duties as county superintendent of public instruction, which are distinct from his duties as secretary of the board.

If on the other hand the superintendent cannot reasonably perform all of these duties, I think it is the duty of the board of public instruction to furnish clerical assistance to perform the clerical duties in connection with the matters required to be performed by the board.

June 22, 1933.

STATE BOARD OF EDUCATION SHALL DETERMINE STANDARDS OF
SCHOOLS OF HIGH GRADE RECEIVING STATE AID

Dear Sir:

I am in receipt of your letter of June 20, making inquiry concerning joint committee substitute for House Bill No. 356 of the 1933 Legislature.

I beg to advise that paragraph (a) of Section 3 of said act provides for the State Board of Education to fix and determine for the establishment, classification and character of all schools of high grades that shall be operated in or hereafter constructed in any county in this State, receiving State aid, and to fix and determine the class or classes of study to be taught in such high schools. Such statute, in my opinion, author-

MISCELLANEOUS

izes the State Board of Education not only to fix and determine the establishment of such schools but to control such schools already established, as well as those that might be hereafter established.

July 1, 1933.

FUNDS ACCRUING DURING CURRENT SCHOOL YEAR ARE SUBJECT
ONLY TO TEACHERS SALARY AND TRANSPORTATION
INCURRED DURING THAT SCHOOL YEAR

Dear Sir:

This refers to your request for my opinion covering certain features of House Bill No. 356, enacted into law at the session of the Legislature of 1933 as Chapter 16170.

It is my opinion that under this law collections for teacher's salaries fund for the fiscal year ending June 30, 1933 are available for the payment of teacher's salaries for the fiscal year ending June 30th, 1933, and for the transportation of pupils for the same period, although some of these warrants may be dated after June 30th., but the warrants, of course, must cover obligations for salaries or transportation that were created prior to June 30th.

All of these funds that accrue on and after July 1st. will be available for teachers salaries and transportation for the period beginning July 1st.

It is my opinion that where there is money left in the teacher's salary fund of any particular county, after the county has paid all current expenses of teachers and transportation, that then such surplus would be available for the succeeding or next scholastic year. On the other hand, if there are not enough funds collected for the period ending June 30th, 1933, or at the end of any scholastic year to pay all the teachers salaries and transportation expenses for that period, the funds accruing after July 1st. 1933, or after July 1st. of each and every year cannot be used to pay this indebtedness. It is my opinion that all warrants must be issued to the teachers and the people who are under contract to carry or transport the pupils, and if the Boards or anyone has borrowed money and advanced to the teachers, yet, nevertheless, these warrants should go to the persons who have rendered the service, and the payment by them to whomsoever may have advanced them money, is a matter to be worked out between them.

June 22, 1933.

PURCHASE OF BUSES LAWFUL

Dear Sir:

This refers to your favor of July 20, in which you make inquiry whether or not warrants could be drawn, under Section 7 of Joint Committee Substitute for House Bill No. 356, Acts of the 1933 Legislature, to cover the purchase price of school busses.

MISCELLANEOUS

The Act provides that the warrants shall be drawn against the teachers Salary Fund for the purpose of paying the salaries of teachers of the Free Public Schools of each county, and for *transportation of pupils*. It is my opinion that a warrant could be drawn covering the purchase price of school busses, and it will be lawful, providing the busses are purchased for the sole purpose of transporting the pupils to and from the schools, and the warrant shows on its face that it is for busses for school purposes only.

September 16, 1933.

COUNTY COMMISSIONERS MAY ALLOT RACE TRACK FUNDS TO
COUNTY SCHOOL FUND

Dear Sir:

This refers to your favor of September 12, making inquiry as to whether or not it was legal for the Board of County Commissioners to allot to the school fund of the county one-half of whatever race track money may come to the county under the Racing Act, to-wit: Chapter 14832, Laws of Florida, Acts of 1931.

I beg to advise that Section 13 of the above act is as follows:

"When the moneys mentioned in the preceding section have been transmitted to the County Commissioners of the several counties of the State in accordance with the provisions of this Act, the County Commissioners of the said several counties shall have the power and discretion to determine whether such moneys shall be converted into the county school fund, or to some other lawfully authorized fund or funds, or shall be equally or otherwise apportioned to any two or more of such funds."

You will see that this law authorizes the county commissioners to convert the race fund into the county school fund or any other lawfully authorized fund or funds of the county, either equally or as they see fit.

November 2, 1933

WHEN LOAN FROM "TRUST FUND" CREATED BY CHAPTER 16114
ACTS 1933, AUTHORIZED

Dear Sir:

I have before me letter addressed to you by Attorney for the Board of Public Instruction of said County, with reference to the said Board borrowing \$6,000.00 from a certain Trust Fund created by Chapter 16114 Acts of 1933 from race track funds received under Chapter 14832, Acts of 1931. Mr. ——— makes inquiry if the Board of Public Instruction may borrow \$6,000.00 from said Trust Fund under the provisions

MISCELLANEOUS

of Chapter 16114 and Chapter 16171, Acts of 1933, and pledge funds anticipated for Board of Public Instruction of said County from the State.

I see no reason why the said Board may not borrow the said sum from such Trust Fund, under the provisions of Chapter 16114, if said amount does not exceed 80% of the amount reasonably expected to be received from the State as per the limitations of Section 1 of Chapter 16171 after eliminating the funds expected to be received from race tracks. I think the funds expected from the race track monies should not be included in the 80% of funds expected from the State and should not be used as a pledge by the Board for repayment of the loan to the Trust Fund created and maintained by race track funds.

A pledge of race track funds for a loan from said Trust Fund would amount to no security for the reason that in Citrus County, under the law, race track funds make up and maintain said Trust Fund and all receipts of race track monies are required to be deposited in said Trust Fund.

November 8, 1933

DUTY OF STATE SUPERINTENDENT TO DECIDE APPEALS AND
QUESTIONS ARISING UNDER THE LAW, BUT MAY
REFER THEM TO STATE BOARD
OF EDUCATION

Dear Sir:

This is in response to your inquiry concerning your legal duties in regard to the above matter, as well as the proper procedure for handling the same.

There has been filed with you a petition by the Board of Public Instruction of Hillsborough County, asking in effect that the State Board of Education take jurisdiction of the matter therein referred to and dispose of the question.

From the petition so presented, it seems that the matter in question concerns a dispute between the Trustees of School District No. 4 of Hillsborough County, and the said County Board of Public Instruction; the principal ground of dispute being the alleged refusal on the part of the said trustees to recognize as the Principal of George Washington Junior High School the party appointed by the County Board, following rejection of the nominee proposed by the Trustees and the failure or refusal of the Trustees to nominate any other person; such refusal to so recognize said appointee as Principal has resulted in the refusal of the Trustees to honor requisitions for supplies for such school made and signed by the said Principal, following directions by the said Trustees, first to the assistant principal, and then to the teachers in the school, to make the requisitions direct. Following such direction to the teachers, the said teachers express themselves as being uncertain as to who held authority in the premises, but respectfully submitted that they would

MISCELLANEOUS

have to honor the rulings of the County Board. The County Board then instructed the said Principal to make requisitions direct to the Board of Public Instruction, and instructed the county superintendent to purchase for the said high school such supplies as were necessary to the proper running thereof.

Under the provisions of Section 183 it is your duty and you are empowered, among other things,

"to entertain and decide upon appeals and questions arising under the law, or refer such to the Board of Education for decision, * * *."

Under Section 755, the State Board of Education is directed and empowered, among other things,

"to entertain and decide upon questions and appeals referred to them by the State Superintendent of Public Instruction on any matter of difference or dispute arising under the operation of law, and to prescribe the manner of making appeals and conducting arbitrations."

There are three matters, therefore, to be determined:

(1) Does this matter present a question arising under the law, or a matter of difference or dispute arising under the operation of law?

(2) If so, what are your duties?

(3) If the matter is referred to the State Board of Education, what is the procedure for handling the same?

Section 716, Compiled General Laws of 1927, provides that the fund estimated out of the special tax fund set apart by the Board of Trustees for educational purposes other than the payment of teachers, shall be paid out by warrants of the Board of Public Instruction of the county upon the county treasurer,

"and said warrants to be based upon requisitions made by the Board of Trustees, accompanied by itemized bills for things purchased or work performed."

Article 12, Section 10, vests only the supervision of all the schools within the district in the Trustees, and Section 709, Compiled General Laws 1927, provides specifically that

"the powers of Trustees shall not be those of control, but of supervision only, and shall extend to all the public schools within a special tax district."

It is my opinion, therefore, that this matter presents a question arising under the school law as well as a difference or dispute arising under the operation of that law, as to which it is your statutory duty to entertain and decide, or refer the matter to the State Board of Education for decision. In other words, said Section 183 gives you the power to decide or, at your option, you may refer the matter to the Board of Education for decision.

MISCELLANEOUS

Concerning the procedure to be followed in event you determine to refer the same to the Board of Education, which under said Section 755 has the power to decide such questions as are referred to it by you, and prescribe the manner of making appeals and conducting arbitrations, I suggest the following:

1. That at a meeting of the State Board of Education, you formally refer the matter to the Board, the same to be noted in the minutes of the Board.

2. That the Board then elect by motion either to entertain and determine, or not, the matter involved, such also to be noted in the minutes.

3. That in the event the Board elects to entertain the matter, that upon motion the time and place of the hearing be set with provision made for notifying all parties concerned in ample time for such hearing; that such notice should be by registered mail and contain a copy of the petition filed; with notice that the Board will conduct a public hearing for the purpose of taking testimony on all phases of the matter involved, to the end that the difference or dispute may be decided.

4. That at the time and place of hearing, the Board convene and proceed to hear the testimony or other evidence offered.

5. That following such hearing, and the closing thereof, the Board then proceed to make its decision in the premises, and issue such order or direction as may be authorized by the law and the facts involved.

6. That following the entry of such order settling such difference or dispute, all parties be notified thereof.

The above procedure should all be incorporated in the motion setting the time and place and manner for conducting the arbitration or hearing.

January 16, 1934

RENEWAL OF TAX ANTICIPATION NOTES ISSUED BY BOARD OF
PUBLIC INSTRUCTION LAWFUL UNLESS THEY EXCEED
80% OF ANTICIPATED REVENUE

This is in answer to yours of the 12th instant, in which you ask whether or not tax anticipation notes issued by the board of public instruction of your county last year are subject to renewal.

I presume that these tax anticipation notes were issued pursuant to Sections 566 et seq. Compiled General Laws of 1927, or Chapter 15779, Acts of 1931.

It is my opinion that these outstanding unpaid notes are subject to renewal provided that the total outstanding unpaid obligations of this nature do not exceed eighty per cent of the amount of revenue reasonably expected to be received from the State of Florida from the county school fund, or eighty percent of the amount as estimated by the county board of public instruction to be required for the maintenance of the necessary

MISCELLANEOUS

common schools of the county for the next ensuing scholastic year, such latter estimate to be in the manner prescribed by Sub-section 13 of Section 561, Compiled General Laws of 1927.

Furthermore, all outstanding notes issued against the preceding fiscal year's revenues must be paid either by actual payment or by renewal thereof, and you would not be authorized to renew any unless all are taken care of, because such would be a violation of the prohibition against borrowing against the next year's revenue without paying in full obligations against the last year's revenue.

MARCH 16, 1934

SCHOOL BUS DRIVER SHALL BE REQUIRED TO STOP SCHOOL BUS
ON THE RIGHT HAND SIDE OF ROAD OR STREET AS CLOSE
TO CURB OR EDGE OF ROAD AS IS PRACTICAL

Dear Sir:

Section 1320 of the Compiled General Laws of 1927 provides that:

"It shall be unlawful to stop any motor vehicle on the public roads, for either convenience or repair, but in all cases where possible to do so shall turn off the road to the right, and the left wheel nearest the center of the paving shall not be more than one foot on the side of the paving."

The Section quoted above is Section 3 of Chapter 10186, Acts of 1925.

Section 2 of Chapter 14552 modified the law on this subject slightly as it applies to school busses, by the following provision, to-wit:

"And such school bus driver be required to stop such school bus on the right hand side of such road or street as close to curb or edge of road as is practical."

March 26, 1934.

DISTRIBUTION OF PAYMENT BY SCHOOL BOARD WHEN FUNDS
ARE INSUFFICIENT TO MEET ALL DEMANDS, SHALL GO FIRST
TO PAY INTEREST, THEN TO PRINCIPAL

Dear Sir:

I am in receipt of your letter of the 20th inst., enclosing communication from the County Superintendent of Public Instruction, making inquiry as to the proper distribution of payments on past due bonds and interest when the funds in hand are not sufficient to meet all payments due.

In reply I beg to say that I find no statutes regulating the subject of your inquiry.

In the matter of ordinary bills and notes the rule appears to be that payments shall first be applied to interest, and if any funds remain

MISCELLANEOUS

the balance shall be applied to the principal. See *Hart v. Dorman*, 2 Fla. 445. You are also referred to 15 R. C. L. 32, Interest 28 & 29. See also title headings in Fla. and So. Digest and American Digest, Decennial and 2nd and 3rd Decennial Digest as follows: Payment 42; Interest 59. See also *Com. v. L. N. R. Co.*, 31 Ky. Law Reports 819, 104 S. W. 267.

April 9, 1934.

SALE OF SCHOOL BOOKS BY MEMBER OF COUNTY
SCHOOL BOARD UNLAWFUL

Dear Sir:

Replying to your favor of April 6th, permit me to say that Section 7986 of the Compiled General Laws of 1927 reads as follows:

"No Superintendent or School Board of any county, or any person officially connected with the Government or direction of the public schools, or teacher thereof, shall receive any private fee, gratuity, donation or compensation, in any manner whatsoever for promoting the sale or exchange of any school book, map or chart in any public school, or be an agent for the sale or the publisher of any school text book, or be directly or indirectly pecuniarily interested in the introduction of any such text book; And any such agency or interest shall disqualify any person so acting or interested from holding any school office whatsoever, and the party so offending shall be fined in a sum not exceeding Fifty Dollars, or imprisoned not more than thirty days."

May 8, 1934.

UNLAWFUL TO INSURE SCHOOL BUILDINGS IN FOREIGN
MUTUAL INSURANCE ASSOCIATIONS OR COMPANIES
WHERE THERE IS A CONTINGENT LIABILITY

Dear Sir:

This is in response to your communication of March 21, 1934, concerning which we have had conferences, and your supplementary communication of May 5, 1934, regarding the above subject.

After a full and complete consideration of this matter, I have come to the conclusion that it is not legal to insure school buildings in foreign mutual associations or companies doing business in the State of Florida, when there is any contingent liability assumed or agreed to be paid by the school authorities, or where such school authorities in effect become members of the association or corporation by sharing in the profits (or surplus over cost) thereof. It makes no difference that the contingent liability may be limited.

The result of this opinion is in effect that my opinion of February 12, 1934, which was confined to domestic mutual fire insurance as-

MISCELLANEOUS

sociations organized under the laws of Florida, is extended, subject to the same restrictions, to foreign mutuals doing business in Florida.

July 7, 1934.

SCHOOL BOARDS SHOULD NOT MAKE BUS CONTRACTS
EXTENDING LONGER THAN SCHOOL YEAR

Dear Sir:

I am today in receipt of a letter under date of the 6th instant from _____ of Kenansville, Florida, making inquiry as to the authority of the Board of Public Instruction to make school bus contracts for a term of 3 or 4 years. I prefer to write directly to officers concerning their duties rather than individuals, and at the suggestion of _____, I am addressing this letter to you and sending her a copy of the same.

There does not appear to be any specific statute authorizing contracts for school busses. Paragraph 11 of Section 561, Compiled General Laws of Florida, 1927, authorizes Boards of Public Instruction to perform all acts reasonable and necessary for the promotion of the educational interests of a County and I think that school bus contracts may be entered into under said provision of law. I do not think, however, that long term school bus contracts would be considered as reasonable or necessary. New Boards of Public Instruction are to be elected at the General Election this year and will take office in January 1935. Under such circumstances, it occurs to me that it would be contrary to public policy for present Boards of Public Instruction to make school bus contracts extending beyond the school term of 1934-35.

July 19, 1934.

PERSON CONTRACTING TO FURNISH AND DRIVE PUBLIC SCHOOL
BUS BECOMES SPECIAL CONTRACTOR FOR HIRE UNDER
CONTRACT WITH BOARD OF PUBLIC INSTRUCTION,
WHICH INURES TO USE AND BENEFIT OF PERSONS
TO BE TRANSPORTED UNDER CONTRACT

Dear Sir:

I am in receipt of your letter of July seventeenth concerning the matter of liability in case of school bus accident. You state that in your county pupils are transported under contract and that the county does not own the busses. You make inquiry if there has been a recent decision of the Supreme Court in such matter.

I beg to say that this matter was passed upon by the Supreme Court of Florida in the case of *Burnett vs. Allen*, decided on April 4, 1934, and appearing in 154 So. page 515. See advance sheet number three of June 7, 1934. The third headnote of said case reads as follows:

"Person contracting to furnish and drive public school bus becomes special contractor for hire under contract with

MISCELLANEOUS

board of public instruction, which inures to use and benefit of persons to be transported under contract."

I regret that we do not have an extra copy of this decision to send you, but the Southern Reporter advanced sheets can probably be seen by you in any attorney's office.

July 25, 1934.

NO APPORTIONMENT STATE SCHOOL FUNDS FOLLOWING
CONSOLIDATION TO HIGH SCHOOL CONSOLIDATED

Dear Sir:

This is in response to your inquiry wherein you ask whether, following consolidation of high schools pursuant to the authority vested in the State Board of Education by Chapter 16170, Acts of 1933, the State Superintendent may lawfully refuse to make apportionment for the coming year of the State school funds as provided by Chapter 14829, Acts of 1931, to the high school which had been consolidated with another high school.

It is my opinion that under the said Act of 1933, the State Board of Education has power to order the consolidation of high schools, receiving State aid; and it is further my opinion that, following such consolidation, the apportionment of funds as provided in Chapter 14829, Acts of 1931, would have to be on the basis of the action taken under the said 1933 Act.

I therefore reply that you may so refuse to make apportionment for the coming year of the State school funds to the high school, which by proper action of the State Board of Education had been consolidated with another high school.

October 10, 1934.

BOARD AUTHORIZED TO INSURE PUBLIC BUILDINGS IN MUTUAL
INSURANCE ASSOCIATIONS

Dear Sir:

This acknowledges receipt of yours of October 10th, wherein you state:

"Millers National Insurance Company of Chicago, Illinois, a mutual fire insurance company, with a million dollars of its cash surplus capitalized as a permanent fund, has been authorized for several years in this State and I am advised that it issues policies containing a clause providing for assessment of policy holders in the event of loss, and a distribution of profits to policy holders in case of gain. Also that the same Company issues policies in Florida similar to those usually issued by stock fire insurance companies in which there is no provision either for assessment of policy holders in case of loss, or distribution of profits to policy holders."

MISCELLANEOUS

You ask whether or not it is permissible for county school boards or other local authorities charged with the placing of insurance on public properties to accept a policy written by this company, which policy contains no provision either for assessment of policy holders or for distribution of profits to policy holders.

It is my opinion that under my prior ruling under date of February 12, 1934, with reference to domestic mutual fire insurance associations, as the same was extended by my ruling under date of May 8, 1934, to apply to foreign mutual insurance associations or companies writing a cash premium policy with no provisions either for assessment of policy holders or for distribution of profits, such school boards or other local authorities may properly insure public buildings in the said Millers National Insurance Company of Chicago, Illinois.

November 19, 1934.

INTEREST AFTER MATURITY IS A CONTINGENT LIABILITY AND
MAY BE ENFORCED BY APPROPRIATE PROCEEDINGS—AND
TREASURER SHOULD REQUEST PAYMENT OF SAME
IN BOND SETTLEMENTS

Dear Sir:

In your letter of November sixteenth, you state that it has been your custom, in collecting past due bonds owned by the State School Fund and other securities handled by your office, to request interest at the rate the bonds bear from maturity to date of settlement.

In a recent opinion of the Supreme Court of Florida, it was held that interest upon matured principal of bonds is a contingent liability that may become enforceable against the obligor for recovery of a judgment at law for such interest. It follows, therefore, that you are within your right in requesting interest from maturity of the bonds to the date of settlement, since this could be enforced by an action at law to recover such interest upon defaulted bonds.

In the cases referred to in your letter, the Supreme Court held that interest on bonds subsequent to maturity could not be enforced by mandamus, but pointed out that such interest is a contingent liability enforceable by appropriate action at law.

It follows, therefore, that, while you could not compel the payment of such interest by mandamus, yet in settlement of such bonds, it is proper to require interest payment after maturity, because of the holding of the Court that such is a contingent liability which may become enforceable against the obligor for recovery of a judgment at law for such interest.

MISCELLANEOUS

November 23, 1934.

COMPULSORY ATTENDANCE LAW APPLICABLE TO CITIZENS OF
STATE ONLY

Dear Sir:

I am in receipt of your letter of the 22nd inst., making inquiry if you, as County Probation Officer and School Attendance Officer, have a legal right to force children of non-residents (tourists) in school.

In reply your attention is called to the first part of, Section 684, Compiled General Laws of Florida, 1927, reading as follows:

"From and after July 1, 1919, every parent, guardian or other person *having citizenship within the State of Florida* having the custody, control or charge of any child or children within the State of Florida between the ages of seven and sixteen years, both inclusive, shall cause said child or children to attend a public or private school each year for a term or period of not less than substantially the number of days the public or private school which said child attends is held annually in the district in which the school is located or in which such child or children may reside: * * *

From the above you will note that the Compulsory Attendance Statute applies to persons having citizenship within the State of Florida, and does not apply to non-residents or tourists.

November 27, 1934.

SALARIES OF COUNTY SUPERINTENDENTS; SCHOOL BUDGET NOT
CHANGED BY

Dear Sir:

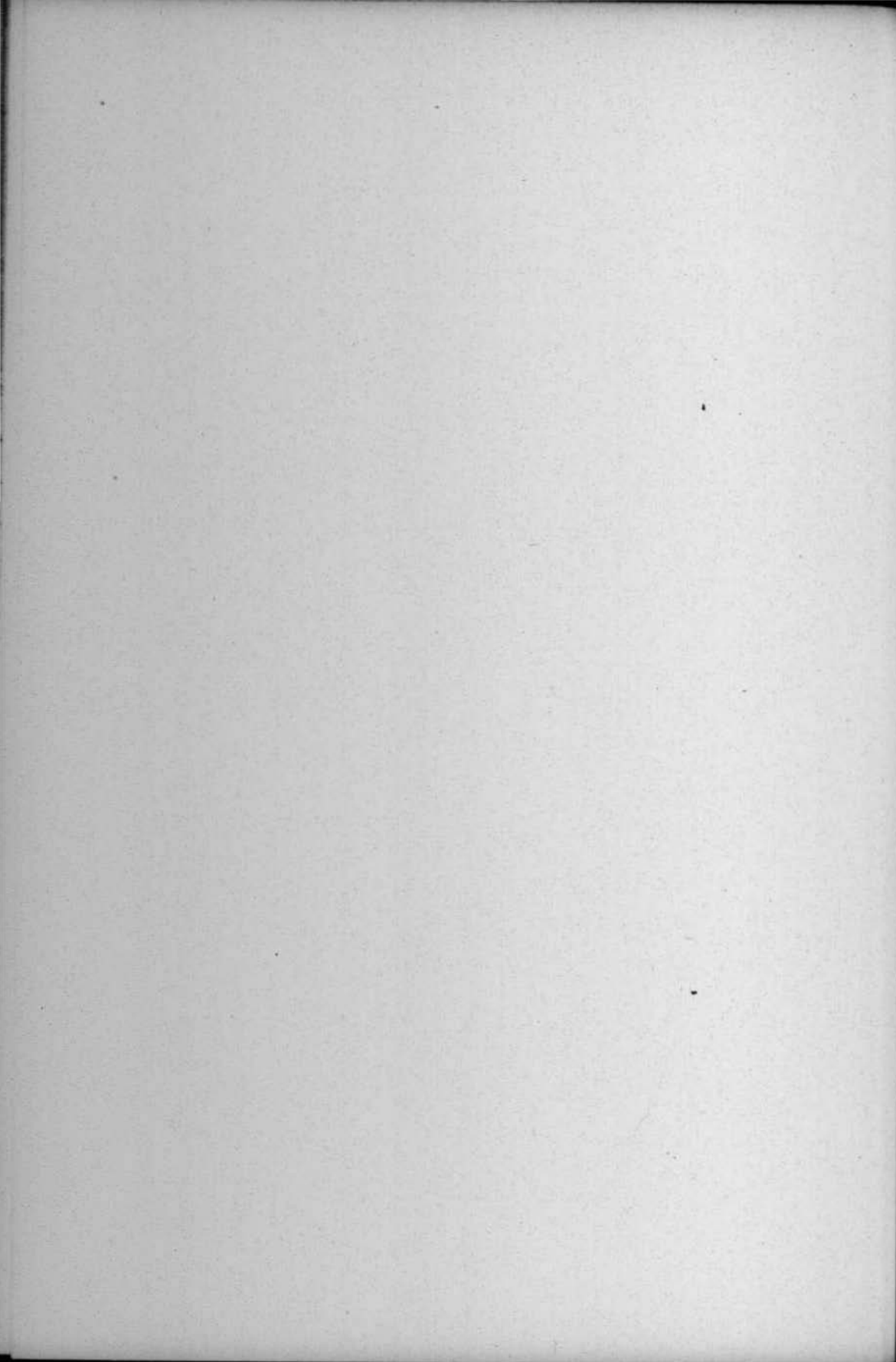
Answering your letter of the 26th inst., with reference to salaries of County Superintendents of Public Instruction, I refer you to Chapter 16236, Acts of 1933, or Section 558 (2) Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"The salaries of the superintendents of public instruction in the counties of this State are hereby ratified and confirmed as heretofore paid; Provided, however, the same shall not ratify or confirm or in anywise establish a salary or compensation to be paid to superintendents of public instruction in the several counties of the State having a population of more than thirty-five thousand and less than forty-five thousand according to the last State or Federal census. Except as otherwise provided by law the same salaries paid during the month of January, 1931, and thereafter shall be continued to be paid to each county superintendent of public instruction in the State of Florida: Provided,

MISCELLANEOUS

however, that no salary of such county superintendent shall exceed the sum of six thousand dollars per year: Provided, further, that no salary shall be paid any superintendent of public instruction in the State of Florida having a population of more than thirty-five thousand, and less than forty-five thousand, according to the last State or Federal census, a salary to exceed the sum of thirty-six hundred dollars per year, payable in monthly installments."

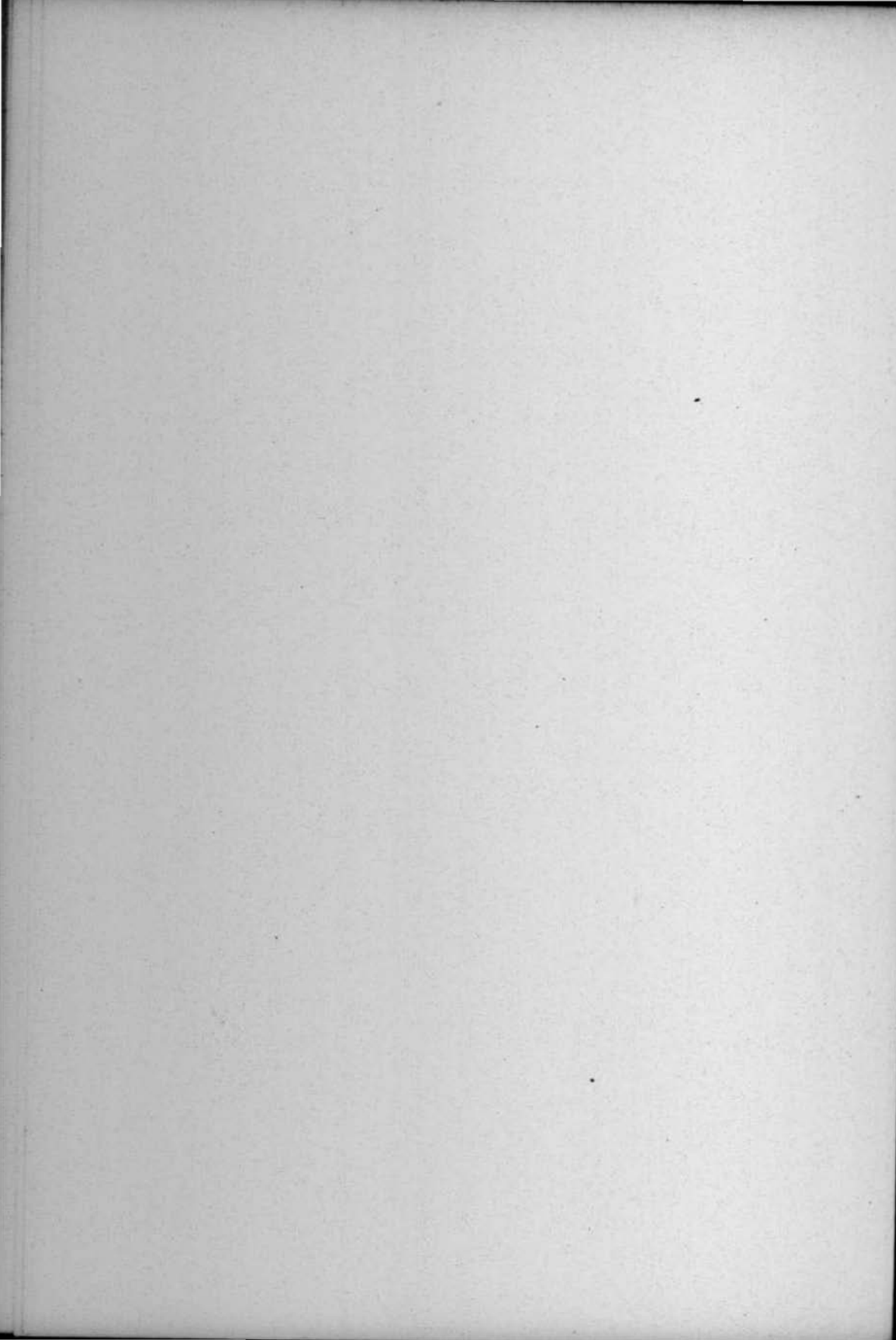
You make further inquiry if it is lawful for the County Superintendent to change the School Budget after it has been approved by the Board of Public Instruction. I assume you have reference to itemized estimates prepared by the Board of Public Instruction under the provisions of Section 561, Compiled General Laws of Florida, 1927. In my opinion neither the County Superintendent nor any other person could lawfully change an itemized estimate of this kind made by the Board of Public Instruction except upon authority of the Board.



CHAPTER IX

STATE BOARDS AND COMMISSIONS

	Page
Section 1. Board of Health	435
Section 2. Racing Commission	440
Section 3. Hotel Commission	449
Section 4. Nurses	452
Section 5. Board of Barber Examiners	454
Section 6. Optometrists	456
Section 7. Live Stock Sanitary Board	457
Section 8. Miscellaneous	459



CHAPTER IX

STATE BOARDS AND COMMISSIONS

SECTION 1

BOARD OF HEALTH

June 30, 1933.

RESIDENTIAL QUALIFICATIONS OF HEALTH UNIT DIRECTORS

Dear Sir:

I am in receipt of your letter of the 28th instant, making inquiry as to whether the residence requirements of House Bill 121, Ch. 16183, Acts of 1933, of the 1933 Legislature will apply to directors of health units provided for under Chapter 14906, Laws of Florida, Acts of 1931.

In reply I beg to say that in my opinion the residence requirements of House Bill 121 apply to such directors of health units.

No statute can impair the obligation of a contract, and if such director of a health unit has a valid contract for a definite term or period, said House Bill 121 would not apply until the expiration of such term. The said Act does apply to employments from day to day.

December 1, 1934.

NARCOTIC DRUG ACT—WHEN LICENSE MAY BE GRANTED

Dear Sir:

I have your letter in which you request my opinion as to who are and who are not entitled to a license under the terms of Chapter 16087, Laws of Florida, Acts of 1933, known as the "Uniform Narcotic Drug Act" (Section 3397 (1)-3397 (22) Compiled General Laws, 1934 Supplement).

Section 3 of the Act makes it unlawful for any person to manufacture or sell, or deal with or in, narcotic drugs without having first obtained a license from the State Board of Health. This Section by its terms does not apply to narcotic drugs dispensed or used by a registered physician, dentist or veterinarian in the course of his professional practice, and also does not apply to such drugs as are used for legitimate medical purposes.

Section 4 of the Act sets forth the qualifications of a licensee.

It is my opinion that any person, association or corporation who can meet the requirements of Paragraphs (a) and (b) of Section 4 of the Act and who is not excluded by Paragraph (c) of this Section, is en-

BOARD OF HEALTH

titled to a license when he makes application therefor to the State Board of Health, and when he otherwise complies with the terms of the Act.

I anticipate that you may experience some difficulty applying Paragraph (c) of Section 4 because it prohibits a license being issued to a "person who has within five years been convicted of a willful violation of any law of the United States, or of any State, relating to opium, coca leaves, or other narcotic drugs * * *". The word "willful" as used in this Section means with an evil intent, or legal malice or without reasonable ground for believing the Act to be lawful. 8 R. C. L. 64, 16 C. J. 80 If a person has been convicted, within five years of the time of making application for a license, of violating a narcotic law which makes a criminal intent necessary for conviction, he will not be entitled to receive a license. On the other hand, a person may be convicted of violating a narcotic law which does not make a criminal intent necessary for conviction. In such case a conviction would not be grounds for refusing him a license, if he otherwise meets the requirements of the law.

In each case where the applicant has been convicted, within five years from the time of making application for a license, of violating a narcotic law of the United States, or of any State, relating to opium, coca leaves, or other narcotic drugs, it will be necessary for the State Board of Health, in passing upon the application, to determine whether or not the conviction was for a "willful violation of any law * * *".

July 10, 1934.

NARCOTIC DRUG ACT—WHEN DRUG STORES MAY BE DENIED
LICENSE ON GROUND OF IMMORAL CHARACTER

Dear Sir:

Replying to your favor of July 9th., I beg to advise that it appears from the provisions of Chapter 13757, Acts of 1929, that wholesale drug stores may be required to employ registered pharmacists when such wholesale drug stores manufacture or compound medicinal and/or chemical preparations.

You ask to be advised whether or not a person or the officers and managers of a corporation or firm could be denied a license to sell narcotics on the ground that they were not of good moral character, as they are required to be under the provisions of Section 4 of the Uniform Narcotic Act of 1933, if they wilfully refuse to comply with the provisions of Chapter 13757 relative to the employment of a registered pharmacist where drugs and chemicals are compounded. "Good moral character" is a term that has been defined in many varied ways. The Act prohibited by the statutes involved in your inquiry may properly be termed mala prohibita in contradistinction to acts mala in se. A lone act mala in se might be under some circumstances sufficient upon which to hold the actor to be of bad character and immoral, but a person is not necessarily of immoral character because he may have on one or more occa-

BOARD OF HEALTH

sion by commission or omission committed an act which is merely mala prohibita. It is only when a person wilfully and persistently fails and refuses to do that which the law requires him to do, or wilfully and persistently does that which the law forbids him to do that would determine whether he is of good or bad moral character, when observance of and obedience to the law, mala prohibita is adopted as the standard of measure. Therefore, it is my opinion that if a person, firm or corporation wilfully and persistently refuses and fails to employ a licensed pharmacist, when the law requires it, that the State Board of Health could declare the applicant for a license to sell narcotics to be of immoral character and would be authorized to refuse the issuance thereof under the provisions of Section 4 of the Uniform Narcotic Act of 1933.

August 30, 1933

**VIOLATION OF DRUG ACT IS MISDEMEANOR AND IMPRISONMENT
MUST BE IN COUNTY JAIL**

Dear Sir:

Replying to your letter of August 24th, permit me to say Section 21 of Senate Bill No. 329, Ch. 16087, Acts 1933, known as the Uniform State Narcotic Law, reads as follows:

"Any person violating any provision of this Act shall upon conviction be punished for the first offense by fine not exceeding \$5,000, or by imprisonment not exceeding five years, or by both such fine and imprisonment, and for any subsequent offense by a fine not exceeding \$10,000, or by imprisonment not exceeding ten years, or by both such fine and imprisonment."

Section 7105, Compiled General Laws of 1927, reads as follows:

"Any crime punishable by death or imprisonment in the State Prison is a felony, and no other crime shall be so considered. Every other offense is a misdemeanor."

Section 7103, Compiled General Laws of 1927, contains the following provisions:

"Whenever punishment by imprisonment is prescribed, and the said imprisonment is not expressly directed to be in the State Prison, it shall be taken and held to be imprisonment in the County Jail."

In view of the statutes quoted above, it will be seen that a violation of Senate Bill No. 329, Acts of 1933, is under the law a misdemeanor.

However, there is no reason why a person convicted of this offense cannot be imprisoned in the County Jail for more than one year. It is true that in counties where there is no county court or Criminal Court of Record, county judges and justices of the peace have jurisdiction to try misdemeanors. But they have jurisdiction to try only such misdemeanors as carry a penalty within the jurisdiction of those courts to

BIENNIAL REPORT OF THE ATTORNEY GENERAL
BOARD OF HEALTH

impose. Other misdemeanors are tried in the Circuit Court, and in those counties where there is a Criminal Court of Record, misdemeanors are tried in that Court.

June 27, 1933

EXPENSES STATE OFFICERS AND EMPLOYEES. MILEAGE AND PER
DIEM OF MEMBERS OF STATE BOARD OF HEALTH

Dear Sir:

Replying to your letter of June 23rd, permit me to say Chapter 16184 Acts of 1933, provides that the maximum amount to be allowed State officers and employees when travelling on State business hereafter shall be for subsistence not more than \$4.50 per day, and the amount allowed for mileage when the State officer or employee is using a privately owned car shall be not more than 5¢ per mile.

I think in addition to the above allowance for mileage and subsistence, the members of the State Board of Health may under the law legally charge a per diem of \$6 per day for each day actually in session. The mileage provision of Section 16 of Chapter 3839, Acts of 1889, was repealed by the 1933 Act, because it is in conflict therewith. But the per diem provision in the old law allowed the members of the Board may properly be held to be for loss of time, and should be held to be an allowance in addition to mileage and subsistence as provided for by the 1933 Act.

August 11, 1934

CERTAIN DRUGS AND PATENT MEDICINES MAY BE SOLD WITH-
OUT A REGISTERED PHARMACIST IN CHARGE

Dear Sir:

I am in receipt of your letter of the 6th inst., making inquiry if it is lawful for a drug store to sell patent medicines without a resident pharmacist in charge.

Your attention is called to Section 3528, Compiled General Laws of Florida, 1927, and Section 3529 of the same compilation, as amended by Chapter 13757, Acts of 1929.

Your attention is further called to the recent decision of our Supreme Court, under date of August 3, 1934, in the case of *Ex parte Geo. Sarros*, in which the Court held that stores or places of business may sell certain patent medicines and drugs without a registered pharmacist in charge. The Court decision in that case, however, did not relate to the use or exhibit of the title of drug store or pharmacy, or similar titles prohibited by Section 3529, when a registered pharmacist was not in charge.

BOARD OF HEALTH

MARCH 15, 1933

BIRTH CERTIFICATE—PERSON ACTUALLY IN ATTENDANCE
MUST SIGN*Dear Sir:*

Replying to yours of March 10th.

It appears that paragraph 2 of Section 3283, Compiled General Laws of Florida, requires that in each case where a physician, midwife or person acting as a midwife is in attendance upon the birth of a child, it is the duty of such physician, midwife or person acting as midwife, to fill in a birth certificate. The statute does not expressly require the same to be signed but it naturally infers as much. I do not think the statute contemplates the signing of the firm name to the birth certificate, even though the same is countersigned by an individual member of the firm. I think the physician or midwife, or person acting as midwife, actually in attendance on the birth of a child should sign his or her name and leave off the name of the firm that the individual may be a member of.

June 1, 1934

TUBERCULOSIS BOARD—AUTHORITY OF COUNTIES IN REIMBURS-
ING STATE BOARD FOR CARE OF PATIENTS LIMITED
BY SECTION 1313, 1927 C. G. L.*Dear Sir:*

This is in response to your communication of May 22, 1934, concerning the above subject and to which I have given careful consideration.

It is my opinion that the method to be followed by counties in reimbursing the State Tuberculosis Board for the care of patients sent from such counties is that set forth in Section 1313, Compiled General Laws of 1927, and no other.

I am further of the opinion that no contract could be entered into by the Board of County Commissioners with the State Tuberculosis Board, obligating the county to pay on any different basis, or running for a length of time in excess of the life of the board of county commissioners entering into it, so as to bind the hands of their successors.

Regretting that under the present condition of the law it is impossible for me to render an opinion otherwise, so as to be of more assistance in working out this worthwhile project.

SECTION 2

RACING COMMISSION

February 7, 1933.

PAYMENT OF PREMIUMS ON BONDS OF EMPLOYEES OF
COMMISSION A LEGITIMATE EXPENSE

Dear Sir:

This refers to your favor of the 7th instant wherein you request my opinion as to whether or not bills for premiums on bonds of employees of the State Racing Commission are authorized by the State Racing Act, to-wit: Chapter 14842, Acts of 1931.

It is my opinion that the State Racing Commission in order to safe-guard the collection of money, etc., should require their employees to be bonded. It seems to me that the Act contemplates that all just, reasonable and necessary expenses of the Commission, and a proper appropriation, it seems to me, is made by the Act wherein it says:

"And the expenses of said Commission is hereby appropriated out of any funds hereafter in the hands of the State Treasurer to the credit of said Racing Commission."

Thus, it is my opinion, that when these bills are properly authenticated, and they cover the payment of premiums on bonds issued to employees of the Racing Commission, that these bills are proper and the law authorizes their payment.

October 25, 1933.

CHAPTER 16184, ACTS 1933, LIMITING EXPENSE ACCOUNTS OF
STATE OFFICERS, ETC., INCLUDES EMPLOYEES
OF RACING COMMISSION

Dear Sir:

Answering your letter of the 20th inst., I beg to say in my opinion Chapter 16184, Laws of Florida, Acts of 1933, limiting expense accounts of State Officers and State employees applies to the State Racing Commission and its employees.

Further answering your letter with reference to Section 12 of Chapter 14832, Laws of Florida, Acts of 1931, as amended by Chapter 16113, Laws of Florida, Acts of 1931, I beg to say in my opinion the 10% retained by the State Treasurer for the payment of salaries and expenses of the Commission is not accumulative from year to year. The only

RACING COMMISSION

purpose of said provision appears to be to take care of salaries and expenses of the Commission after the close of a racing season and until further monies are received under the Act.

September 16, 1933.

AUTHORIZED TO PAY NEWSPAPER SUBSCRIPTIONS

Dear Sir:

I have a letter from the State Racing Commission by _____ its Secretary, in which he states that there has been some question raised as to whether or not they are authorized to pay for several newspaper subscriptions.

The State Racing Commission feels that this is necessary in order to have before them detail information concerning the activities of the race tracks, etc., and it is my opinion that this would be a valid charge, if and when it is authorized by the State Racing Commission.

May 3, 1933.

LICENSEE NOT REQUIRED TO PAY TAX ON PASS GIVEN
TO TELEGRAPH OPERATOR

Dear Sir:

Replying to your letter of the 2nd instant with relation to the requirement for payment of tax on free passes under the provisions of Section 9 of Chapter 14832, Laws of Florida, Acts of 1931, it is my opinion that this requirement applies only in case of passes issued for attending races.

The applicable portion of the Racing Act is as follows:

"If any free passes or complimentary admission cards shall be issued to guests by the licensee, the licensee of such track shall pay to the Commission the same tax upon such complimentary admission card as if same were sold at the regular and usual admission rate; * * *"

This evidently applies only in case of guests attending the races. Telegraph operators who attend only to sending, receiving and delivering messages are not guests attending the races, and were evidently not intended to come within this provision of the Act.

It is my opinion, therefore, that the licensees of race tracks are not required to pay the tax on admission of employees of Western Union Telegraph Company, who enter solely for the purpose of carrying on the business of the telegraph company.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
RACING COMMISSION

June 27, 1933.

PERMIT NOT TRANSFERABLE

Dear Sir:

In reply to your letter of June 23rd, with which you enclose inquiry from an Attorney of Jacksonville, as to whether permit issued to an individual may later be transferred to a corporation, permit me to say Section 21 of the Race Track Act of 1931, contains the following provision:

"No permit or license granted under the provisions of this Act shall be transferrable or assignable."

September 19, 1934.

AUTHORITY TO AMEND PERMIT

Dear Sir:

This is in response to yours of the 19th, wherein you advise that you are in receipt of a letter from the holder of a permit issued on August 2, 1934, requesting permission to amend the said permit, setting forth a location other than that contained in the original application upon which the permit was issued. We understand further that the election to ratify such permit has not as yet been held. You ask for your authority under such circumstances to allow such amendment and issue a permit based thereon.

It is my opinion that inasmuch as the election has not been held, the permit holder is one and the same person or corporation who originally applied, and had it applied in the first instance with the location designated as now requested you would have had to issue such permit, you are authorized to allow such amendment and issue an amended permit accordingly.

June 20, 1934.

PERMIT SHOULD BE RENEWED EACH YEAR UNTIL RATIFIED BY
AN ELECTION

Dear Sir:

I am in receipt of your letter of the 19th instant, making inquiry if it is necessary that a racing permit be secured each year when an election has not been held.

In reply I beg to say that when an applicant has secured a racing permit but has failed to have the same ratified by an election within the year, such applicant should secure another permit from the Racing Commission in order to have the same ratified by an election.

RACING COMMISSION

January 16, 1934.

DISTRIBUTION OF MONEYS CAN ONLY BE MADE ON OR ABOUT
APRIL 15TH*Dear Sir:*

This acknowledges receipt of yours of January 15, 1934, in which you ask for my opinion as to whether or not it is legal to make distribution of race monies out of the accumulation on hand from month to month with the final distribution on or before April 15th, as approved by Section 12 of Chapter 14832, Acts of 1931, as amended by Chapter 16113, Acts of 1933.

The said Section as amended now reads:

"On or before April 15th of each year the State Treasurer shall make up a complete statement of all monies paid out upon warrants to the Comptroller as above stated during the preceding year, of the balance on hand as shown by such statements he shall retain to the credit of the Commission a sum equal to ten percent of such balance, and the ninety percent remaining shall be divided into as many equal parts as there are Counties in the State, and there shall be remitted one part to each county. This Section shall be construed to mean that after all salaries and expenses of the Commission have been paid for each fiscal year of the State, ten percent of the amount remaining in the hands of the State Treasurer in his capacity as Treasurer of the Commission shall be retained to the credit of the Commission to meet expenses accruing before further monies are received under this Act, and that all the balance of said money shall be equally apportioned to the several Counties of the State, on or before April 15th of each year."

Out of the monies received under the Act, the salaries and expenses for the maintenance of the State Racing Commission must be paid. Such expenses come in from month to month as they accrue and are paid out upon the voucher of the Commission as provided in Section 3 of said Act.

The said Act taken as a whole contemplates, therefore, a single statement and a single distribution as provided in said Section 12, and because of the inability to protect the Treasurer as against subsequently accruing expenses which cannot be estimated in advance, I beg to advise that it would not be valid to make distribution until such time as the Act contemplates, to-wit: on or before April 15th, when it is possible to accurately determine the exact single net balance on hand after all expenses are paid.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
RACING COMMISSION

December 9, 1933.

COMPTROLLER HAS DISCRETIONARY AUTHORITY TO REFUSE TO
PAY SALARIES OTHER THAN AT MONTHLY INTERVALS

Dear Sir:

This answers your inquiry of November thirtieth, in which you ask to be advised as to whether or not the Comptroller is acting within his legal authority in refusing to issue his warrants to pay salary vouchers of your commission except at monthly intervals.

Section 3 of Chapter 14832, Acts of 1931, provides that the disbursements from the racing fund for the compensation and expense of said Commission shall be made in the manner as now provided by law for salaries and expenses of the State Government, with the provision, of course, as to vouchers which is mentioned in my communication of even date.

The manner now provided by law is for the issuance of a warrant by the Comptroller upon the State Treasurer authorizing the latter to pay. Section 142, Compiled General Laws of 1927, makes it the duty of the Comptroller to examine, audit and settle all accounts, claims and demands against the State and to issue his warrant to the Treasurer directing him to pay.

I am unable to find any statute which requires the Comptroller to issue his warrant at any specific time, on the other hand laws relating to the salaries of State Officers (Chapter 15859, Acts of 1933) provide for the payment in equal monthly installments on warrants issued by the Comptroller; and the whole practice in the Comptroller's office regarding salaries has been that of monthly payment. The obvious reason for this is the necessity of order and system in that office to the end that the many duties may be handled in an orderly business like and economical fashion.

I am, therefore, of the opinion that it is within the discretion and the authority of the Comptroller to pay the salary warrants of employees of your commission on a monthly basis in keeping with his uniform practice.

December 9, 1933.

TRANSFER OF STATE FUNDS—TRANSFER OF SURPLUS IN
RACING COMMISSION FUND TO GENERAL FUND

Dear Sir:

This is in response to your inquiry as to whether or not there is authority in law for the transfer of any surplus in the fund of the State Racing Commission to the General Fund of the State.

By Chapter 16113, Acts of 1933, it is provided, in regard to the fund of the State Racing Commission, as follows:

RACING COMMISSION

"On or before April 15th of each year the State Treasurer shall make up a complete statement of all moneys paid out upon warrants to the Comptroller as above stated during the preceding year, of the balance on hand as shown by such statements he shall retain to the credit of the Commission a sum equal to ten per cent of such balance, and the ninety per cent remaining shall be divided into as many equal parts as there are Counties in the State, and there shall be remitted one part to each County. This section shall be construed to mean that after all salaries and expenses of the Commission have been paid for each fiscal year of the State ten per cent of the amount remaining in the hands of the State Treasurer in his capacity as Treasurer of the Commission shall be retained to the credit of the Commission to meet expenses accruing before further moneys are received under this Act, and that all the balance of said money shall be equally apportioned to the several Counties of the State on or before April 15th of each year."

The above act amended Section 12 of Chapter 14832, Acts of 1931. By Chapter 12295, Acts of 1927, Section 2, now appearing as Section 1365, Compiled General Laws of 1927, it is provided as follows:

"Whenever there exists in any fund provided for by law or departmental regulation a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist other funds in the State treasury which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last mentioned fund, the Governor of the State of Florida may, with the approval of the Comptroller, order a temporary transfer of funds from one fund to another in order to meet temporary deficiencies in particular funds without resorting to the necessity of borrowing money and paying interest thereon: Provided, that the fund from which any money is temporarily transferred shall be repaid the amount transferred from it as soon as practicable thereafter, same to be done upon order of the Governor and approved by the Comptroller: Provided, that no transfer shall be made from the funds provided for the operations of the State live stock sanitary board."

It is my opinion that the said Act of 1927 shows a definite legislative intent to apply to all funds, except those of the Live Stock Sanitary Board.

It is further my opinion that an ascertained surplus in the ten per cent. retained to cover the expenses of the Racing Commission, pending the coming in of further moneys, is such a fund as may be transferred, in as much as they are funds in the State Treasury, which are for the time being in excess of the amounts necessary to meet the just requirements of the State Racing Commission fund.

In making such transfer you will, of course, procure the approval of the Comptroller and make the same in accordance with the Statute.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
RACING COMMISSION

December 9, 1933.

SALARIES AND EXPENSES OF NOT PAYABLE EXCEPT UPON
VOUCHER SIGNED BY SECRETARY AND CHAIRMAN

Dear Sir:

This is in response to your communication of November thirtieth, 1933, wherein you ask whether or not, under Section 3 of Chapter 14832, Acts of 1931, it is necessary for there to be a voucher signed, as therein provided, before items of expense may be charged against the racing commission fund.

This Section provides, in part, as follows:

"And no money shall be paid out by the Treasurer for salaries or expenses of the Commission except upon voucher of the Commission signed by the Chairman and counter-signed by the Secretary, which voucher shall exhibit in detail the item or items for which the money is paid."

This portion of the statute is still in force, and it is my opinion that it requires such voucher, before the payment of money for such purposes, to be charged against the fund of the State Racing Commission.

December 22, 1934.

WHEN RESERVE FUND TRANSFERABLE TO GENERAL
REVENUE FUND

Dear Sir:

In your letter of the 21st instant, you state that at the close of business December 10, 1934, there was to the credit of the State Racing Commission fund \$80,499.68, the same consisting of the 10% reserve required by Section 12 of Chapter 14832, Acts of 1931, as amended by Chapter 16113, Acts of 1933.

You state that the question raised is whether any part of said reserve fund on hand December 10, 1934, is available for transfer to the general revenue fund under the provisions of Chapter 12295, Acts of 1927. If there is more in said reserve fund than the amount necessary to meet the just requirements of said reserve fund, the excess may be temporarily transferred to the general revenue fund, in order to meet temporary deficiencies in the general revenue fund, provided that such transfer be made upon condition that the same will be repaid to the said reserve fund as soon as practicable, and in any event prior to April 15, 1935.

On the other hand, if there is no expectation of repayment of the proposed transfer to the said reserve fund prior to April 15, 1935, then in my opinion the proposed transfer could not lawfully be made.

RACING COMMISSION

December 28, 1934.

STATE RACING COMMISSION MAY REFUSE TO ISSUE OCCUPATIONAL LICENSE TO PERSONS CONNECTED WITH RACE TRACK

Dear Sir:

I am in receipt of your telegram of this date reading as follows:

"Please give us your earliest convenience opinion regarding our right to refuse issuance of occupational licenses."

In reply I refer you to Section 9B of Chapter 14832, Laws of Florida, Acts of 1931, regulating racing in Florida, reading as follows:

"All persons connected with race tracks, including the gate keeper, announcers, ushers, starters, officials, jockeys, drivers, trainers, handlers, owners, stablemen, clockers, assistants, sellers of racing forms or bulletins, attendants in connection with the wagering machines, managers of tracks, apprentices or other persons connected in any way or manner with the operation of any race track, shall pay an occupational tax of \$10.00 annually to and be licensed by the Commission. And it shall be unlawful for any person to take part in or officiate in any way, serve in any capacity at any race track without first having secured said license and paid said occupational tax; provided, however, this Section shall not apply to disabled ex-service men of any war in which the United States was a participant."

Your question involves the right of the Commission to censor and control the personnel of parties connected in any way or manner with a race track." Since no such right upon the part of the Commission appears to be specifically granted by the terms of the statute, it becomes necessary to ascertain if such right is implied from the statute.

In construing any statute it is necessary to ascertain, if possible, and take into consideration the purpose of the Act. The Section, above quoted, on first impression might seem to be a purely revenue measure. It seems to me, however, that if the Legislature had intended such an Act purely as a revenue measure the issuing of licenses to such persons connected with a race track would have been left entirely to the County Judge of the County in which such race track might be located. Section 17 of Article V of the State Constitution provides that the County Judge "shall issue all licenses required by law to be issued in the County." It is evident that the Legislature had this provision of the Constitution in mind upon the passage of this Racing Act for the reason that it is specifically provided in Section 20 of the Act that whenever any license is granted by the Commission under said Act, the same shall be issued by the County Judge of the County where such race meeting is to be held.

From the above and from the further fact that Section 9-B, above quoted, will provide an inconsequential revenue, I think it may be

RACING COMMISSION

fairly inferred that the Legislature did not intend said Section as a purely revenue measure but had in mind that the Commission should supervise the personnel of parties connected with race tracks.

In conclusion I beg to advise, in my opinion, the State Racing Commission may refuse to grant licenses to persons connected with a race track when they have good reasons for such action, but the Commission would not be authorized to act in an arbitrary manner in such matter.

December 29, 1934.

TIME OF MAKING APPLICATION FOR RACING PERMIT

Dear Sir:

I am in receipt of your letter of the 22nd instant, the body of which reads as follows:

"Please give us at your earliest convenience, your opinion as to when under the Act the Commission can consider applications for and grant permits to conduct a race track."

In reply I beg to refer you to Section 5, Chapter 14832, Laws of Florida, Acts of 1931, the first two sentences of which read as follows:

"On or before the first day of July of each and every year, any person, association or corporation possessing the qualifications prescribed in this Act shall have the right to apply to said Commission for a permit to conduct race meetings and racing under this Act. On or before the fifteenth day of August of each and every year after receipt of any such application the Commission shall convene at the State Capitol to consider the grant, permits applied for."

This is the only statute on the subject of your inquiry and it is somewhat indefinite, but in my view the statute contemplates that such applications shall be filed on or before the first day of July of each year for the racing season immediately following and extending to July of the next year. I do not think that applications may be made at this time for racing permit covering the current racing season but in my opinion I do not see any prohibition against application for and the granting of a permit any time after January 1, 1935, to cover the racing season subsequent to July, 1935.

SECTION 3

HOTEL COMMISSION

December 11, 1933

LAW DOES NOT PRECLUDE PURCHASE OF AUTOMOBILES

Dear Sir:

You have asked my opinion as to whether or not you should approve as an expense of the Hotel Commission of Florida the purchase of an automobile for the use of such Commission.

Under Chapter 16042, Acts of 1933, there is established a State Hotel Commission headed by a Hotel Commissioner. Section 3 provides that the Commissioner shall keep accurate account of all expenses arising out of the performance of his duties, and file monthly itemized statements of the same with you, together with an account of all fees collected. By Section 4 he is authorized to make such rules and regulations as are necessary to carry out the provisions of the Act in accordance with its true intent; and by Section 9 the license fees chargeable are payable to the Hotel Commissioner.

Section 33 provides that on and after October 1, 1933, "the only appropriation for the maintenance of the Hotel Commission and the carrying into effect all laws, rules and regulations pertaining to the construction, maintenance and operation of hotels, * * * and other buildings coming under the jurisdiction of the Hotel Commission, shall be such amounts as are actually collected by said Hotel Commission; and the amounts paid for such licenses and fees so collected, or so much thereof as may be needed, are hereby appropriated for such purposes."

The said Section 33 then provides that should there be a surplus on September 30, 1933, and annually thereafter, amounting to \$10,000 or more, the Legislature shall make provision for deposition of such surplus over \$5,000.

The specific question which you have asked is whether or not Chapter 13810, Acts of 1929, now appearing as Section 1363 (1), 1932 Supplement, to Compiled General Laws of 1927, precludes the purchase of an automobile by the State Hotel Commission.

It is my opinion that the obvious intent and purpose of the statute creating the Hotel Commission, is to make it a self-supporting body, the Legislature appropriating all, so far as might be necessary, of the fees and commissions received by the Commission for the maintenance thereof, repealing all laws in conflict therewith.

It would be perfectly proper for the State Hotel Commissioner to make a rule requiring the employees to travel in automobiles owned by the Commission, and in compliance with such rule, to provide the automobiles necessary.

I therefore conclude that you are authorized to approve the purchase of automobiles or motor vehicles by the State Hotel Commission.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
HOTEL COMMISSION

August 2, 1933

COMMISSIONER MUST PAY PREMIUM ON HIS BOND REQUIRED BY
LAW. PREMIUM ON THE BONDS OF HIS INSPECTORS MAY
BE PAID FROM OFFICE EXPENSES

Dear Sir:

This acknowledges receipt of your communication of August 1st, with reference to the premiums on bonds of the Hotel Commissioner and Deputy Hotel Commissioners.

I understand that by Deputy Hotel Commissioner you mean a traveling inspector. This opinion is with reference to Chapter 16042, Acts of 1933.

Section 2 of said Act reads that you as Hotel Commissioner "shall give bond in the sum of Ten Thousand Dollars for the faithful performance of his duties, to be approved by the Governor." Under this Section, it is my opinion that the premium on this bond must be paid by you, in as much as such bond is necessary in order for you to qualify as Hotel Commissioner, and is a condition precedent to your assuming such position. Such antecedent expenses must therefore be borne by you.

Under Section 4 of said Act you are authorized and required to make such rules and regulations as are necessary to carry out the provisions of the Act, and by Section 3 thereof it is your duty to keep an accurate account of all expenses and file monthly itemized statements and account for all fees collected.

By Section 33 is mentioned the appropriation "for the maintenance of the Hotel Commissioner."

It is my opinion that under the provisions of this Act you have authority to promulgate a rule requiring the travelling inspectors or other employees to be placed under bond, and that the premium on such bond is a legitimate expense of your office.

Your bond should be made payable to David Sholtz, as Governor of the State of Florida, and his successors in office. The bonds of your employees should be made payable to J. B. Sullivan, as Hotel Commissioner of the State of Florida, and his successors in office. This latter is necessary, because under the provisions of the Act you are the collecting agent and responsible for the performance of the duties in connection therewith.

June 15, 1933

APARTMENT HOUSE—DEFINITION

Dear Sir:

Replying to your letter of June 14th, permit me to say it appears under the provisions of Section 6 of House Bill No. 586, Acts of 1933, (Chapter 16042) that any building or part thereof, where separate accom-

HOTEL COMMISSION

modations for more than two families living independently of each other are supplied to transient or permanent guests or tenants, should be held to be an apartment house, and that upon proper application the Hotel Commission should issue to the owner or manager thereof a license to conduct an apartment house, whether the same is furnished or unfurnished.

SECTION 4

NURSES

December 28, 1934.

SPECIAL PERMIT TO APPLICANT FOR EXAMINATION

Dear Sir:

I am in receipt of your letter of the 14th instant, with reference to granting of special permits to applicants for examination as nurses.

In reply your attention is called to Sections 3516 and 3518, Compiled General Laws of Florida, 1927, being Sections 9 and 11 of Chapter 7831, Acts of 1919, reading as follows:

"3516. It shall be unlawful for any person to practice nursing as a trained nurse without having obtained a certificate or license, or permit of registration as herein provided. A permit may be issued trained nurses by the secretary of said board, upon receipt of application and registration fee for State registration in this State, said permit to be valid from date issued until the next meeting of said board.

"3518. This law shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family and also it shall not apply to any person nursing the sick for hire, but who does not in any way assume to be a trained nurse."

Section 3516, above quoted, appears to contemplate the issuance of only one permit to an applicant. To construe the law as providing for successive permits to the same party, after failure on examination, would be a construction that would lead to the defeat of the very purpose of the Act to require registered nurses to take and pass an examination.

You will note that Section 3518, above quoted, permits the nursing of the sick for hire provided the nurse does not assume to be a trained nurse and under such provisions nurses failing to pass the examination are not entirely shut off from work for hire even though the remuneration may not be as great as that usually paid to registered nurses.

October 19, 1934.

SUPERINTENDENTS HOSPITALS—NOT REQUIRED TO BE
"REGISTERED NURSES"*Dear Sir:*

Replying to your letter of the 16th, I beg to advise that there is no statute in this State requiring superintendents of State, county, municipal or private hospitals to be registered nurses. Neither is there a compulsory law requiring registration of nurses. Nurses may register and practice as "registered nurses."

It is unlawful, however, for any person to practice professional nursing as a "registered nurse," without a certificate as provided by law.

NURSES

May 31, 1933.

REGISTRATION FEE OF \$10 PREVAILS

Dear Sir:

Replying to yours of May 29, permit me to advise that in so far as the provisions of Sections 3497 to 3505, inclusive, of the Compiled General Laws, the same being Sections 1 to 10, inclusive, of Chapter 6491, Acts of 1913, inclusive, conflict with Sections 3506 to 3521, inclusive, Compiled General Laws, the same being Sections 1 to 16, inclusive, of Chapter 7831, Acts of 1919, the same have been repealed.

I note that Section 3505, Compiled General Laws, which is the same as Section 10 of Chapter 6491, Acts of 1913, provides a registration fee of \$5.00, while Section 3514, which is Section 7 of Chapter 7831, Acts of 1919, provides for a registration fee of \$10.00. Of course, the latter amount being the fee provided for in the later act, is the amount the Board is authorized to charge.

I do not find an act of the Legislature subsequent to the 1919 act governing this subject.

SECTION 5

STATE BOARD OF BARBER EXAMINERS

December 12, 1934.

RESTORATION OF CERTIFICATE LAPSED FOR OVER ONE YEAR

Dear Sir:

This acknowledges receipt of yours of December eleventh, wherein you inquire as to the proper fee to be charged for the restoration of a certificate which has lapsed for a period in excess of one year; your specific question is whether you could charge ten dollars for the restoration of the certificate and five dollars for the current fiscal year.

Section 1 of said act makes it unlawful to engage in the practice of barbering without a certificate of registration. Section 14 requires every registered barber to annually, on or before July first, renew his certificate of registration and pay the required fee; and that every certificate which has not been renewed during the month of July shall expire on the first day of August. This Section further provides that a registered barber, whose certificate has expired, may have his certificate restored immediately upon payment of the restoration fee.

Section 17 fixes the fees and provides a three dollar fee for the *renewal* of a certificate to practice barbering and a fee of five dollars for the *restoration* of a certificate to practice barbering. This Section then provides that all applications for renewal or restoration must be made within a period of one year after the date of expiration, or that otherwise the fee shall be ten dollars.

It is, therefore, my opinion that the proper fee for the restoration of a certificate which remains lapsed longer than one year after the August first on which it expired, is the sum of ten dollars, which restores the certificate in full for the current fiscal year without payment of any additional sum for the issuance of a certificate for such fiscal year.

October 16, 1934.

STATE BOARD NOT AUTHORIZED TO CHANGE LAW

Dear Sir:

I acknowledge receipt of your letter of the 15th instant, enclosing a letter from the Secretary to the State Board of Barber Examiners.

In his letter he states that soon after the enactment of Chapter 14650, known as the Barber Act, some of the beauticians of the State voluntarily came under the jurisdiction of the State Board of Barber Examiners by making application to said Board, and paying the required fee but that in the ensuing year the majority of these failed to renew their licenses. He refers to that part of Section 17 of said Act, which

BOARD OF BARBER EXAMINERS

requires "all applications for renewal or restoration of certificate must be made within a period of one year after the date of expiration, otherwise the fee shall be \$10," and wishes to know whether the Board has the authority to change this paragraph to the extent of collecting as a restoration fee the sum of \$5 rather than \$10 as called for in said Act.

It is my opinion that the Board is without authority to change the provisions of said Act in any respect, and that they are required to administer the same as enacted.

SECTION 6

OPTOMETRISTS

July 31, 1934.

PERMITTED TO PRACTICE WHILE EMPLOYEES OF JEWELRY
STORES, ETC.*Dear Sir:*

I am in receipt of your letter of the 28th instant, enclosing communication to you under date of the 26th instant from Mr. ———, to which was attached copy of letter to Mr. ———, under date of the 26th instant, from Duval Jewelry Company, Inc., by ———, President, Jacksonville, Florida. The question presented is whether the State Board of Optometry is authorized to revoke certificates to practice optometry when the holders of same are employed by jewelry and other stores and practice their profession as such employees.

In reply I beg to call your attention to the practice existing for a number of years of physicians and surgeons being employed by turpentine and other large operators. Such employment does not appear to be considered unprofessional and I fail to see where the employment and service in the instant case would be unprofessional. Neither do I find in the statutes any authority for revocation of certificate to practice optometry for the reason mentioned.

December 28, 1934.

STATE BOARD NOT AUTHORIZED TO ISSUE LICENSE TO PRACTICE
WITHOUT EXAMINATION*Dear Sir:*

Answering your letter of the 20th instant, I refer you to Chapter 14778, Acts of 1931, governing optometrists and I beg to say I find nothing in said Act authorizing your Board to issue certificates or licenses to practice optometry to members of other Boards without examination. On the contrary said Act appears to require examination for all who desire to practice optometry except in cases of certain exceptions, which exceptions do not include members of other Boards as such.

Your attention is particularly directed to Section 5 of said Act containing the following language:

"It shall be the duty of said Board to examine thoroughly every applicant desiring to practice optometry in this State."

Your attention is further directed to Section 8 of said Act which makes it unlawful for any one to practice optometry in this State without first procuring a certificate of registration or license as a registered optometrist in accordance with the provisions of said Act.

SECTION 7

LIVE STOCK AND SANITARY BOARD

July 18, 1933

STATE NOT AUTHORIZED TO BORROW MONEY FROM FEDERAL GOVERNMENT

Dear Sir:

This will acknowledge receipt of your letter of July 11th in which you ask "to be advised whether or not the State Live Stock Sanitary Board is legally authorized, as created, to borrow funds from the Federal Government for the purposes indicated."

The operation of your Department of the State Government is now among the current expenses of the State. The Constitution requires the Legislature to provide for raising sufficient revenue for current expenses for each fiscal year. Under the Constitution it is contemplated that the annual State expense shall not exceed the revenue raised for each fiscal year and that the Legislature shall make provision for raising this revenue for each fiscal year by means other than borrowing money by issuing promises for the State or for a State agency to pay in the future the amount borrowed.

The State Live Stock Sanitary Board was created and now exists by Virtue of Chapter 9201, Acts of 1923, and amendments thereto. It is my opinion that a State agency, such as your Board, has no authority to borrow money from the Federal Government or from any person, firm or corporation for any purpose whatsoever. In this connection, see in re: Advisory Opinion to the Governor on November 23, 1927, reported in 94 Fla. 967, 114 So. 850.

March 21, 1933

TICK ERADICATION—BOARD ONLY AUTHORIZED TO EXPEND
TOTAL OF \$250,000.*Dear Sir:*

This is to acknowledge receipt of your letter of the 20th instant, in which you ask to be advised whether the State Live Stock Sanitary Board is authorized to expend the \$250,000.00 appropriated in Chapter 15719, Acts of 1931, in addition to the taxes raised by the levy of $\frac{1}{2}$ mill, as provided by Chapter 9201, Acts of 1923.

Section 15 of Chapter 9201, Acts of 1923, which is brought forward as Section 3331 of the Compiled General Laws of Florida, 1927, levies the tax and appropriates the proceeds therefrom to the purpose of carrying

BIENNIAL REPORT OF THE ATTORNEY GENERAL
LIVE STOCK AND SANITARY BOARD

out the provisions of law relating to tick eradication, and the General Appropriation Act of 1931, which is Chapter 15719, Acts of 1931, limits the amount of expenditures from the funds raised by the levy made in Chapter 9201. Therefore, the Live Stock Sanitary Board is not authorized to expend \$250,000.00 in addition to the funds raised by the $\frac{1}{2}$ mill levy provided by Chapter 9201. On the other hand, the Board is confined in its total expenditures from the fund raised by the levy made in Chapter 9201 to the total of \$250,000.00.

SECTION 8

MISCELLANEOUS

January 7, 1933.

RAILROAD ASSESSMENT BOARD—AUTHORIZED TO EMPLOY
CLERK*Dear Sir:*

Section 960 of the Compiled General Laws provides for the assessment for taxation of railroads, sleeping, parlor car companies, etc. This statute provides that if these companies make returns and you should see fit to accept the returns as the proper assessment, then the returns stand as the assessment, but "should any such company or its officers fail to make the returns required by this law on or before the first Monday in March, when such returns are made, or should any such returns not be made, or should the Comptroller have reason to believe that any returns so made does not cover a complete and correct value of such railroad property, it is hereby made the duty of the Comptroller, Attorney General and State Treasurer, after having given not less than five day's notice to the person or persons making the returns of the time and place of hearing to assess the same from the best information they can obtain, specifying the value thereof in each county, and the value of the locomotives, engines, passenger, sleeping, parlor, freight, platform, construction and other cars and appurtenances, etc."

The statute also provides for the apportionment of the miles of main track, branch, switch, spur track and side track, etc.

These companies in times past have failed to make these returns, and the Assessment Board, composed of yourself, the Attorney General and State Treasurer found it necessary to acquire correct, specific and proper data with reference to all of these matters in order to use the same as a basis for the assessment and to obtain such data it is necessary to employ some one who is skilled and who has a proper knowledge of such matters to make up and furnish the Board this data and information, and the Board has therefore employed Mr. _____ as such official.

It is my opinion that the employment of such a person rests with the State Taxing Board, inasmuch as each member of the Railroad Assessment Board has to rely upon this information. In other words, the work of Mr. _____ in the capacity in which he is employed by the Board is strictly for the Board, and it is for them as a Board to employ Mr. _____ or any such person as the Board may see fit to do this work.

MISCELLANEOUS

September 20, 1934.

PHYSICIANS AND SURGEONS—QUALIFICATIONS NECESSARY TO
OBTAIN LICENSE FROM STATE BOARD MEDICAL EXAMINERS*Dear Sir:*

I am in receipt of your letter of the 15th instant, with reference to the qualifications of persons applying to the State Board of Medical Examiners for license to practice medicine in this State. Particular inquiry is made as to whether an applicant must be a citizen of the State.

In reply I beg to quote you the following portion of Section 3408, Compiled General Laws of Florida, 1927, from which you will observe that such applicant must be citizen of the United States or must have declared his intention of becoming such citizen:

"The board shall admit to examination any candidate who pays the fee hereinafter provided for and submits evidence verified by oath, satisfactory to the board, that such applicant:

"1. Is more than twenty-one years of age and a citizen of the United States or has declared his intention of becoming such citizen.

"2. Is of good moral character.

"3. Is a graduate of a legally incorporated medical college maintaining a standard satisfactory to the board."

October 20, 1934.

BONDS—STATE BOARD OF EDUCATION MAY ACCEPT REFUNDING
BONDS OF CITY OF PENSACOLA IN LIEU OF BONDS NOW
OWNED BY STATE SCHOOL FUND*Dear Sir:*

This acknowledges yours of the 20th instant.

You have submitted copy of final approving opinion expected to be rendered by Messrs Masslick and Mitchell as approving counsel, regarding the refunding issue.

These Attorneys are recognized as competent bond counsel, and I therefore advise that upon the final issuance of such approving opinion, the State Board of Education has the authority to accept these refunding bonds, in lieu of those owned by the State school fund, if it determines such exchange to be advisable.

MISCELLANEOUS

September 13, 1934.

AGRICULTURAL MARKETING BOARD—COST OF ERECTING AND
EQUIPPING PLANTS LIMITED TO SURPLUS IN
GENERAL INSPECTION FUND*Dear Sir:*

This refers to your request for my opinion as to the powers of the State Agricultural Marketing Board under Chapter 15860, Laws of Florida, Acts of 1933.

I beg to advise that I have carefully examined this act. This Board is made up of the Governor of the State of Florida, the Commissioner of Agriculture and the State Marketing Commisisoner and constitutes a statutory board. It is given the power, under this act, among other things, "to purchase suitable sites and to erect thereon assembling plants and properly equip same for the handling of all staple field crops, meats, poultry and dairy products, etc."

This Chapter further provides that this Board may operate the plant and market the materials handled and make such charges for services that will cover the cost of operation and deposit such collections with the State Treasurer.

It thus appears that any charges that are made should be limited to the actual cost of operation, because the act later provides that "the funds necessary to defray the expenses of erecting and equipping the plant or plants shall be expended from the General Inspection Fund: Provided, that only such funds shall be used for the erection of these plants as are available after all other needs of the Department of Agriculture have been provided for as per appropriation during each fiscal year."

This Board having been given the power to purchase and operate these plants, it is my opinion that with the limitation as to the sources of the funds with which the plants may be erected, and with the limitation that the charges for services shall only cover the cost of operation, this Board would not have the authority or have any funds that could be pledged for future payment other than such funds as might be in the General Inspection Fund each year after all other needs of the Department of Agriculture have been provided for, in accordance with each fiscal year's appropriation.

November 5, 1934.

CHIROPODISTS—DEFINITION

Dear Sir:

I am in receipt of your letter of the 1st inst., making inquiry with reference to the Chiropody Act, Chapter 15911, Acts of 1933.

You state that you have a client who is engaged in the sale of ortho-

MISCELLANEOUS

pedic foot supplies or the making and selling of arch supports to measure; that in cases of fallen arches, bunions and callouses, and while waiting for the manufacture by him of the arch supports, and to relieve the purchaser temporarily, he massages the foot and protects same by bandages and adhesive felt; that he does not use any medicine or drugs of any character, nor prescribe same in connection with his work and does not remove corns or bunions by the use of knife or drugs.

In reply your attention is called to the definition of chiropody, as set forth in Section 1 of the above mentioned Act reading as follows:

"Chiropody shall mean the diagnosis, medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg, except the amputation thereof; and shall include the use and prescription of local anesthetics."

In my opinion massaging the feet and protecting them with bandages and adhesive felt, even though for temporary relief while waiting for the manufacture of the appliances being sold, constitute the practice of chiropody under the above quoted statute, and do not come within the exemptions of Sections 5 of said Act.

March 26, 1934.

BOARD OF PUBLIC WELFARE—RECORDS RELATIVE TO CHILDREN
IN CHILD CARING AGENCIES

Dear Sir:

Governor Sholtz has referred your telegram of the 24th. instant to this office, and requested that you be given a direct answer by the Attorney General.

Permit me to say Section 4131 of the Compiled General Laws of 1927 has been carefully considered, and this office has reached the conclusion that all records relating to children received or placed out by Child Caring Agencies mentioned in Sections 4130 to 4133, inclusive, shall, when delivered to and inspected by the State Board of Public Welfare be placed in a sealed envelope or other container, and shall thereafter be kept by said Board as a sealed record, and shall not be subject to further inspection by anyone whomsoever, except that any person may file with said Board his petition in writing setting up fully the reasons why he should be allowed to examine said record and showing the purpose to which said information will be put after examination of same. The same Section provides for notice from the Board to the custodian of the child or children, and to the agency or agencies from whom such record was obtained, etc.

I do not find that the Judge of the Juvenile Court has anything whatever to do with the question of whether or not sealed records shall be inspected. The Board of Public Welfare appears to have complete discretionary authority in the matter, subject to the protection of the interest of interested parties by a Court of competent jurisdiction.

MISCELLANEOUS

November 27, 1934.

BICYCLE SIDE PATHS

Dear Sir:

I am in receipt of your letter of the 23rd inst., enclosing newspaper clipping and a letter from Mr. _____ of Morriston, Florida, under date of the 20th inst., with reference to Bicycle Side Path Commissioners.

In reply I beg to refer you to Sections 2715 to 2727, Compiled General Laws of Florida, relative to bicycle side paths and the appointment of Boards of Side Path Commissioners, which laws were passed in 1901 and 1903.

I have looked over some of the early records in the office of the Secretary of State for the years of 1903 and 1904 and examined the records alphabetically from Alachua County to and through Leon County and found only the appointment and commission of two Commissioners in Hillsborough County in August 1903.

It does not appear that there has been any general operation under the above statutes which may be due to two causes:

1st. That the law is very loosely drawn;

2nd. Bicycles appear to have gone into general disuse owing to the advent of automobiles.

November 21, 1933.

NATUROPATHY—DEFINITION OF AND POWER OF BOARD TO PASS ON APPLICATION

Dear Sir:

This will reply to letter under date of November 16th from Messrs. _____ of St. Petersburg, Florida, addressed to you and referred to this office for reply.

Section 3474, Compiled General Laws of 1927, makes it unlawful for a person to practice naturopathy until he shall first receive a license so to do from the Florida State Board of Naturopathic Examiners, and requires applicants for examination to make application in writing to the Secretary of the Board at least two weeks before any regular meeting of the Board, or any special meeting that may be called for that purpose, in such form as the Board may require for such examination and license.

The Section provides further that the applicant shall furnish evidence satisfactory to the Board, among other things, that he has taken a three-year course in a reputable, chartered school or college of Naturopathy, wherein the curriculum of study included instruction in "anatomy, physiology, histology, pathology, hygiene and sanitation, chemistry, diagnosis, symptomatology, non-surgical gynecology, midwifery, jurisprudence, first aid philosophy, and the science and practice of naturopathy."

MISCELLANEOUS

In view of the provisions of law quoted above, it seems to me that it is up to the Board of Examiners to determine whether or not the application filed by the applicant is in such form as the Board requires, and that it is within the province of the Board to determine what constitutes *'a reputable chartered school or college of naturopathy.'*

Under the law, if the Board should determine to its satisfaction that a college of medicine, which conferred a degree of "M. D." was or is a reputable chartered school or college requiring instruction in the branches named in the statute governing applicants for the examination to practice naturopathy, and that such college could for the purpose of examination be classed as a reputable chartered school or college of naturopathy, or the equivalent of such school or college, the Board could legally examine an applicant holding a degree of "M. D." conferred by such college of medicine.

June 3rd, 1933

PODIATRY BOARD—LEGISLATIVE EXPENSE NOT AUTHORIZED
BY LAW

Dear Sir:

I am in receipt of your letter of the 31st ultimo, with reference to closing out the Florida State Board of Examiners of Podiatry, and transferring the files, records and supplies to the new Board, which is provided for under an Act of the 1933 Legislature.

Chapter 12197, Laws of Florida, Acts of 1927, providing for a Board of Examiners of Podiatry was held invalid by the State Supreme Court by division appearing in 146 Southern, page 544.

Senate Bill No. 115, Ch. 15911 of the Acts of 1933 is a new law on the same subject. I would suggest that when you turn over your files, records and supplies to the new Board, that the same be listed and a receipt taken therefor, and a copy of the same sent to the State Auditor. I also think it would be proper to turn over to the new Board all moneys on hand, notwithstanding the failure of the 1933 Act to make any provision with reference thereto.

In one paragraph of your letter you state that it is the wish of the members that the money on hand be used to help meet legislation expenses which were assumed in order that a new law might be passed. Neither Chapter 12197 of 1927, nor Senate Bill No. 115 of 1933 would appear to authorize expenditure of the funds in such manner.

MISCELLANEOUS

September 27, 1934

STATE PLANT BOARD—QUARANTINE AREA SHOULD BE FOUND TO
BE ACTUALLY INFESTED AND BOARD SHOULD DEFINE IT
AS QUARANTINE AREA. BOARD SHOULD PUBLISH
NATURE OF QUARANTINING
DESIGNATING AREA

Dear Sir:

This is in response to your communication of the 24th instant. The matters therein set forth are in substantial accord with conference had with Mr. Pleus in connection with this matter. I make the following additional suggestions:

(1) As to proposed Rule 47A, the same should find the area described to be actually infested and declare the area defined to be a quarantine area.

(2) As to rule 6B, the same should find the area described to be actually invested and declare the area defined to be a quarantine area.

In regard to the specific question of publication, Section 5 of the said Chapter 12291, Acts of 1927, now appearing as Section 3834, Compiled General Laws of 1927, provides that the rules and regulations be promulgated by publishing the same in the official organ of the Board, or by giving such other reasonable public notice as may be prescribed by the Board. There is a proviso that in case of an emergency, where it is necessary to place a quarantine to take effect immediately, the promulgation may be made by proclamation of the Governor, at the request of the Board.

It is my opinion that under this Section (absent the official organ which we understand has been discontinued), it is within the discretion of the Board to determine the manner of publication and the length of time such publication shall run. In other words, it may determine that reasonable notice will be given by publishing such notice once, or by publishing such notice once a week for four weeks, etc. Whatever manner is determined, however, should be specifically acted upon and shown in the minutes of the Board, and incorporated into the form of notice published. Once such determination is made, then the rules cannot take effect until the completion of the publication prescribed.

I feel, however, that the Board would be safer and its action less open to criticism by prescribing more than one insertion of the notice in a newspaper. The general theory running through our statutes seems to be that once a week for four consecutive weeks (that is, twenty-eight days elapsing between the first publication and the effective date) is a reasonable notice. In such event as indicated above, such rules would not become effective until the expiration of the twenty-eight day period following the first insertion of the notice. I suggest that the Board use the four weeks period as basis, particularly in view of the emergency proviso which can be used in the event of immediate necessity.

The entire publication prescribed must take place after the action of

BIENNIAL REPORT OF THE ATTORNEY GENERAL
MISCELLANEOUS

the board, and any insertions of the notice prior to the Board's action would be of no avail.

August 22, 1933

BOARD OF CONTROL—POWER TO REQUIRE BOND OF
CERTAIN EMPLOYEES

Dear Sir:

In reply to your inquiry of August 21, 1933, I am of the opinion that the Board of Control has authority to require certain of its employees to handle funds to be placed under fidelity or surety bonds, and that it may pay the premium on the same.

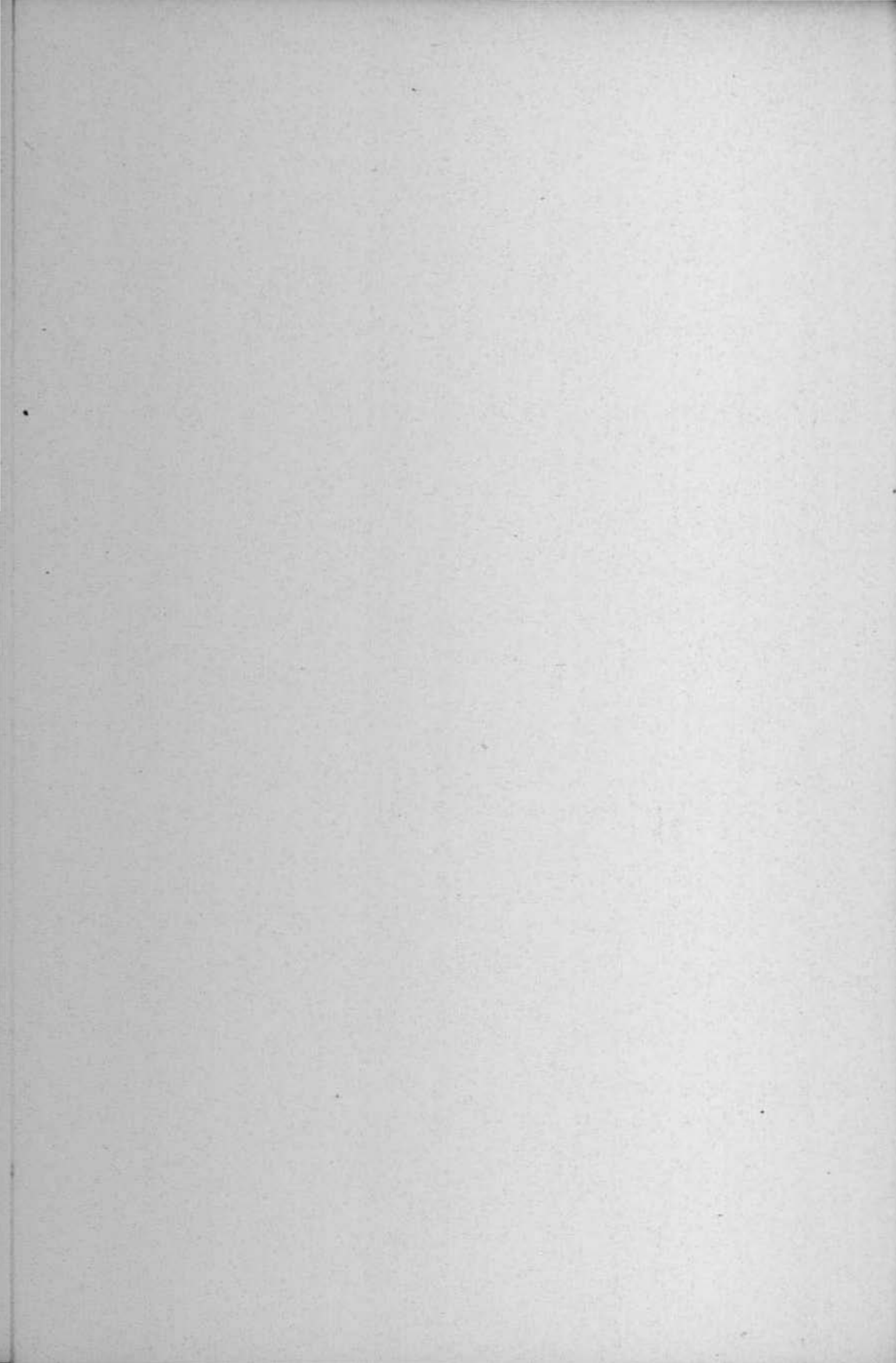
I call your attention to Section 778, Compiled General Laws of 1927, giving the Board of Control complete management and control of the several institutions mentioned therein, with full management, possession and control of the same and every department thereof; with authority to provide for the proper keeping of accounts, registers and records thereof, and authority to do and perform every other matter and thing requisite to the proper management, maintenance, support and control of the said institutions necessary or requisite to carry out fully the purposes of this law.

It is my opinion that this Section gives the Board of Control authority to safeguard its funds by placing employees handling the same under bond, the Board paying the premium thereon.

CHAPTER X

INSURANCE AND SURETIES

	Page
Section 1. Insurance	469
Section 2. Sureties	479



CHAPTER X

INSURANCE AND SURETIES

SECTION 1

INSURANCE

February 3, 1933.

COUNTY COMMISSIONERS MUST PASS RESOLUTION BEFORE COUNTY CAN LEVY TAX

Dear Sir:

I am in receipt of your letter of the 27th ultimo, requesting construction of the following language contained in Section 1182, Compiled General Laws of 1927:

"Counties, cities and towns may require a license tax of any such agent not to exceed fifty per cent. of this State license tax."

In my opinion the county commissioners should pass a resolution for charging and collecting such county license before the tax collector would be authorized to charge same. The amount may be fifty per cent. of the State license or any smaller percentage or amount.

You further ask what constitutes an insurance broker under Section 1089, Compiled General Laws of 1927.

In reply I beg to quote you the following definition in 14 Ruling Case Law 868, Insurance 40:

"An insurance broker is one who acts as a middleman between the assured and the insurer, and who solicits insurance from the public under no employment from any special company, but having secured an order, he either places the insurance with a company selected by the assured, or in the absence of any selection by him, then with a company selected by such broker."

March 8, 1933.

FRATERNAL BENEFIT SOCIETIES—CERTIFICATE IN CERTAIN FORM NOT AUTHORIZED

Dear Sir:

I have your letter of the 4th instant, handing me form of preferred endowment certificate of the Preferred Life Assurance Society of Mont-

INSURANCE

gomery, Alabama, on which you request my advice as to whether this form of certificate may lawfully be used by a society qualified under the law relating to the incorporation and regulation of Fraternal Benefit Societies.

I have carefully read and studied this form of certificate, together with the statute relating to the incorporation and regulation of Fraternal Benefit Societies, and in this connection have had the benefit of the views of Messrs. Waller and Pepper expressed in a letter addressed to you, under date of August 6, 1932. My conclusion and opinion is that this form of membership certificate is not included within the class or character of business permitted by the law relating to Fraternal Benefit Societies.

Section 1 of Chapter 6970, Acts of 1915, which is Section 6391 of the Compiled General Laws of Florida, authorizes corporations, societies, etc., to make provision for the payment of benefits to its members when the same is done solely for the mutual benefit of its members and their beneficiaries. By the use of the term "solely for the mutual benefit of its members and their beneficiaries" the Legislature evidently intended that the members of such societies should be on an equality as to the benefits derived from membership. However, I think we need only refer to Section 6402 of the Compiled General Laws to determine the particular kind of certificates that may be issued by Fraternal Benefit Societies.

I do not believe that the contingent endowment feature of the proposed form of certificate is included within the authorization of Section 6402, and I doubt if the class or division feature written into said form is permissible under said Act.

Section 6401 of the Compiled General Laws exempts Fraternal Benefit Societies from all provisions of law relating to insurance companies in this State, and in order to entitle them to the benefits of this exemption, such societies are confined strictly to the kind of benefits authorized by Section 6204.

Under Section 6204, Fraternal Benefit Societies must provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age. The only authority under Section 6204 for giving a member all or any portion of the face value of his certificate is upon his becoming permanently disabled or attaining the age of 70. This does not include the contingency of paying the face of the certificate to a member upon the death of another member, as is contemplated in the contingent endowment feature of the form of certificate furnished me.

My conclusion is that you would not be authorized as Insurance Commissioner in permitting a Fraternal Benefit Society to issue certificates of the form submitted.

INSURANCE

June 17, 1933.

BENEVOLENT MUTUAL BENEFIT ASSOCIATIONS—CERTIFICATE ASSIGNABLE; PAYABLE IN CASH ONLY BY INSURER*Dear Sir:*

I am in receipt of your letter of the 14th instant, copying Section 16 of Senate Bill 478, Chapter 15885, Acts of 1933, and making inquiry whether a membership certificate, policy, contract or other certificates issued by associations incorporated under this Act may be made payable in whole or in part to a beneficiary or assignee for the purpose of guaranteeing directly or indirectly payment of an indebtedness under a separate contract between the member and an undertaker, under which separate contract the undertaker agrees to furnish merchandise or services in connection with the burial of the member to whom such policy, contract, or other certificate is issued by an association incorporated under said Senate Bill No. 478.

In reply I beg to say that under the provisions of the last paragraph of Section 16 of said Senate Bill 478, it appears that the holder of a contract or certificate of an association incorporated under the provisions of said Act may assign the said contract or certificate, or designate any beneficiary which he may desire, but the company must pay in cash only.

The purpose of such assignment or the naming of another beneficiary would appear to have no bearing in the case.

July 24, 1933.

SURRENDER OF DEPOSIT—LIFE INSURANCE COMPANY REINSURING OBLIGATIONS OF ANOTHER COMPANY AND PUTTING UP DEPOSIT WITH STATE TREASURER, RELEASES BOND OF FIRST COMPANY*Dear Sir:*

You state in your letter of July 20th, 1933, that you have approved a reinsurance agreement whereby Suwannee Life Insurance Company, Jacksonville, has reinsured the policy obligations of the Douglas Industrial Insurance Company. You request my opinion on the question: Are you authorized, under this state of facts, to surrender to the Douglas Industrial Insurance Company this deposit made pursuant to Section 6263, Compiled General Laws of Florida, 1927? The deposit required by Sections 6263 and 6264, Compiled General Laws of Florida, 1927, is for the benefit of policy holders in Florida.

Assuming that you required the Suwannee Life Insurance Company, Jacksonville, to comply with Sections 6263 and 6264, Compiled General Laws of Florida, 1927, in connection with its liability of reinsurance before you approved the reinsurance agreement, it is my opinion that you may release to the Douglas Industrial Insurance Company its deposit made under these Sections of the statute.

July 24, 1933.

CANCELLATION SURETY BOND NOT AUTHORIZED BY COMPANY

Dear Sir:

This will acknowledge receipt of your letter of July 20th.

Section 6242, Compiled General Laws of Florida, 1927, requires a fire insurance company doing business in this State to deposit with the State Treasurer certain bonds or a bond of a surety company authorized to do business in Florida. You ask "if it would be proper to include in such bond a provision permitting cancellation by the surety company upon giving written notice to the State Treasurer a reasonable length of time prior to such cancellation."

The statute does not provide for the cancellation by the surety company of its bond under any condition. In my opinion you are not authorized to approve a bond of a surety company with a provision for cancellation such as is referred to in your letter.

January 13, 1934.

STATE LAW INAPPLICABLE TO POLICIES OR BONDS COVERING
PROPERTY OF U. S. GOVERNMENT

Dear Sir:

In your letter of the 3rd instant you ask my opinion as to whether the provisions of Section 6224 of the Compiled General Laws of Florida, 1927, are enforceable in the matter of writing policies or bonds covering property or risks in Florida for the United States government and/or its agencies.

I think the State would be entirely without authority or power to interfere with the United States government or its agencies in such matters.

In the next place, the statute carries no penalty or forfeiture, and would probably be difficult to enforce in any case.

February 21, 1934.

EXAMINING AND LICENSING AGENTS OR SOLICITORS

Dear Sir:

"Primarily" as used in Section 1 of Chapter 13663, Laws of Florida, Acts of 1929, as amended by Section 1 of Chapter 14741, Acts of 1931, should in my opinion be construed to mean of first or paramount importance.

Thus construed, any person, et cetera, representing an insurer, in soliciting, negotiating or effecting contracts of insurance, surety or indemnity, on a strictly commission basis and also in any other capacity,

INSURANCE

should be deemed and held to be an agent or solicitor only where the representation in soliciting, negotiating or affecting such contracts is of first or paramount importance, or the principal business engaged in in such representation and all other representation, is of secondary importance.

As such, such person would be entitled under said Act to a license as agent or solicitor as the character of his representation would justify. On the other hand, if the representation other than that of soliciting, negotiating or effecting contracts of insurance, surety or indemnity is of equal importance to or greater than that of soliciting, negotiating or effecting contracts of insurance, surety or indemnity, then such person, et cetera, under the terms of said Act, would not be deemed or held to be an insurance agent or solicitor and would not be entitled to a license as such.

I believe the rule for determining the right of any person, co-partnership, association or corporation to a license as an insurance agent or solicitor might be stated to be as follows: Where the principal business of such person, co-partnership, association or corporation in representing an insurer is that of soliciting, negotiating or affecting contracts of insurance, surety or indemnity on a strictly commission basis, and all other representation is secondary thereto, such person, co-partnership, association or corporation should be deemed and held to be an insurance agent or solicitor, and as such entitled to the license provided for in said Act.

It seems to me that the character and importance of such representation would have to be determined from the contract of representation between the insurer and such persons, co-partnership, association or corporation, or the character of the representation and the relative amount of business engaged in as such, or both.

This answers your letter of the 17th instant, as I understand the purport of said Act.

August 31, 1934.

FIRE INSURANCE COMPANY—QUALIFICATION BONDS UNDER
SECTION 6242 COMPILED GENERAL LAWS, 1927—STIPULATION
FOR CANCELLATION BY SURETY

Dear Sir:

This is in response to your two communications under date of August 24th and August 28th respectively. You ask whether or not a surety bond filed with you pursuant to the provisions of Section 6242, Compiled General Laws, 1927, may contain either of the following stipulations therein:

"It is further expressly understood and agreed by and between the parties thereto, that this bond may be cancelled by the surety

INSURANCE

by giving written notice by registered mail to the State Treasurer, that at the expiration of sixty days after receipt of said notice of cancellation by the said State Treasurer the surety shall be relieved of any further liability accruing under this bond."

"IT IS FURTHER expressly understood and agreed by and between the parties hereto, that this bond may be cancelled by the surety by giving written notice by registered mail to the State Treasurer, that at the expiration of sixty days after the receipt of said notice of cancellation by the said State Treasurer the surety shall be relieved of any further liability accruing under this bond; and that if so required by said State Treasurer, the principal herein named will procure and substitute another bond of like character and amount, or will make a deposit with said State Treasurer of cash, or of a like amount of marketable securities, at their market value, such bond or securities to be acceptable to said State Treasurer and to be made in accordance with all of the laws of Florida applicable thereto."

It is my opinion, that in line with my prior opinion to you under date of April 11th, 1934, you are authorized to accept under the said Section a bond containing either of the stipulations above quoted. You understand, of course, that the cancellation authorized by such stipulation is not retro-active in effect, but simply relieves the surety from further liability. Upon such cancellation being effective, it will then become necessary for the insurance company involved to comply anew with the provisions of said Section.

September 21, 1934.

COMPENSATION TO AGENT ON BUSINESS PROCURED DIRECTLY
BY COMPANY OR OTHER AGENT IS NOT UNLAWFUL

Dear Sir:

This is in response to yours of the 17th instant, wherein you ask the legal application of the following provision in an agency agreement between a casualty and surety company and its Florida agents:

"The Company will allow the Agent, as full compensation for services rendered it or another agent of the Company in he way of executing bonds, applications for which shall have been procured directly by it or by such other agent, a commission of five per cent. of the first premium of each such bond or undertaking, which commission, however, shall in no case exceed the sum of fifteen dollars (\$15) and shall be payable by the Company or such other Agent, as the case may be."

You ask specifically whether it is permissible for the company issuing such bonds, applications for which shall have been procured

INSURANCE

directly by it, to retain for its own use any part of the "full and usual commission," a schedule of which as to the company involved shows the same to range from 10% to 25%, according to the class of business and 20% in case of fidelity and surety bonds, other bonds taking different rates of commission.

It is my opinion that such provision in the agency contract does not violate Sections 6213 to 6216, or Section 6224, Compiled General Laws of 1927.

September 24, 1934.

BURIAL COMPANIES NOT AUTHORIZED TO DO
INSURANCE BUSINESS

Dear Sir:

This refers to your favor of September nineteenth.

Roberts and Son has not discontinued their policies upon my advice, but this office did ascertain that a number of these companies were doing business that was not justified under the law. This office carried this to the Supreme Court and the Supreme Court ruled that this burial company had no authority under the law to do an insurance business.

That is the reason Roberts and Son endeavored to get an insurance company to carry their clients; and, evidently, they are unable to get a company to carry their risks at the old amount.

This office, representing the people of the State of Florida, did bring this suit in the Supreme Court, and the Supreme Court ruled that such burial insurance companies had no right to carry such insurance. I understand that Mr. H. M. Hampton, an attorney of Ocala, Florida, is going to represent a great number of people such as you, and I would suggest that you write him setting forth the character of your complaint.

October 25, 1934.

ANY CONTRACT WHICH AFFORDS INDEMNITY OR SECURITY
AGAINST LOSS FOR A STIPULATED CONSIDERATION,
IS INSURANCE

Dear Sir:

This is in response to your communication of October 3, 1934, answer to which has been delayed in order to procure a complete form of proposed membership contract involving the above matter.

There has been handed to me a proposed membership contract styled "Service Contract," to be entered into between Florida Motorist Protective Association, Incorporated, a Florida corporation, and the owner of an automobile, which contract certifies tht the named owner is a member of such association for a period of two years, and is entitled

INSURANCE

to the services and benefits described on the reverse side of such contract. The contract begins at 12:00 A. M. on the day the member's application is received by the Company, and contains a complete description of the member's automobile, and lists the membership benefits and services consisting of:

(1) Towing Service, which is to be rendered by the Association's official garages, and which is limited to one hour, the value of the same not to exceed Three Dollars for any single trip.

(2) Road Emergency Service, rendered to members by the Associations' official garages, including roadside repairs, transportation of oil and gas, and for lady drivers, change of tires, which service is limited to one hour, and the value thereof not to exceed Three Dollars for any single trip.

(3) Bail Bond. This service consists in aiding and assisting the named member without charge and upon qualifying, in obtaining bond from a duly authorized surety company up to Ten Thousand Dollars, necessitated by reason of having caused injury to persons or property in the use or operation of the automobile involved; the Association also agrees to aid and assist in obtaining bond where the named member is charged with manslaughter arising as the result of the operation of such automobile, but exempts itself from liability in case of reckless or intoxicated drivers.

(4) Automobile Theft Reward, in the sum of Fifty Dollars, offered by the Association for the arrest and conviction of anyone stealing a member's automobile, which also provides that notice of loss should be reported to the home office and immediate steps will be taken to recover such automobile.

(5) Road and Touring Information, consisting of the Association furnishing road and touring information free to its members, as well as road maps for any part of the United States.

(6) Criminal Proceedings—Death—Manslaughter. In this clause the Association states that it retains counsel to represent its interests, which counsel are available to its members in any criminal proceedings brought against them, such as manslaughter, as the result of accident involving the operation of the member's automobile by himself, any member of his family, agent or employee.

(7) Liability and Property Damage Claims. This clause recites that the Association's counsel are available to the member in the event of any legal proceedings brought against him in any liability claim or demand, or in any actions brought by him against anyone else in any property damage claim or demand arising from the use or operation of such automobile by himself, his family, agent or employee.

(8) Collision Claims. This clause recites that the Association's counsel are available to the member, any member of his family, agent or employee, in the event of collision claims against anyone else covering damages to the said automobile including the damages to equipment attached thereto, belongings, etc., sustained in accidental collision or

INSURANCE

upset by reason of the negligence of anyone else, when and if adjudged and determined by the Association to be collectible, and/or referred to a court of competent jurisdiction for its determination, collecting and remitting the full amount expended by the named member in repairing such damage.

(9) Traffic Violations. This clause recites that the Association's counsel are available to its members in the event of alleged violation of State laws, city ordinances, or traffic regulations.

The Association also reserves the right to refuse any and all services contained in the said contract to members charged with criminal carelessness, reckless driving, or driving while intoxicated, and reserves the right to demand full payment of any unpaid balance on the contract immediately after a member becomes involved in any accident where service is required under the said contract.

You have asked for my opinion as to whether such a contract constitutes a contract of insurance. It is my opinion that it does.

I do not need to go into the definition of insurance. It is enough to say that the general object or purpose of an insurance company is to afford indemnity or security against loss, and this for a stipulated consideration, premium or membership fee. To grant indemnity or security against loss, for a consideration, is not only the design and purpose of an insurance company, but is also the dominant and characteristic feature of the contract of insurance, and the means by which indemnity is to be given need not be by the payment of money only. It is true that because of the practical situation existing, it is often provided that a definite sum of money be paid on account of the risk assumed. However, many insurance policies offer the company an option to repair or replace or render other services in lieu of a money payment.

It is noted that in the first two risks assumed by this contract, the so-called service is limited in value to Three Dollars for a single trip, which fixes definitely the limit in money to the obligation incurred, and in each instance such service is rendered to the member free of charge.

It is my opinion that to otherwise hold will be to encourage attempts to establish insurance companies not subject to the wholesome provision of the insurance laws, which laws are founded on a wise public policy, and any attempt to evade them should be promptly met and defeated.

December 12, 1934.

STATE COMMISSION HAS AUTHORITY TO SURRENDER SECURITY
UPON MERGER AND QUALIFICATION OF COMPANIES

Dear Sir:

I acknowledge receipt of your letter of the 10th instant, to which is attached copy of merger agreement between Reliance Insurance Company

INSURANCE

of Philadelphia, and the Victory Insurance Company of Philadelphia, together with copy of the charter of Reliance Insurance Company of Philadelphia as the surviving company.

You state the Reliance Insurance Company of Philadelphia has requested you to surrender the \$20,000.00 of bonds heretofore deposited by the Victory Insurance Company of Philadelphia, and ask to be advised if you are authorized to surrender these bonds upon filing by the surviving company in the office of the Secretary of State of Florida in accordance with the Foreign Corportion Laws of this State, a copy of the agreement and charter accompanying this letter.

Section 6246 of the Compiled General Laws, 1927, provides that if a fire insurance company ceases to carry on business in this State, and its fixed liabilities for losses and for taxes shall have been satisfied, and the contingent liabilities under its policies shall have been assumed by another company doing business in this State, in case such reinsuring company, if non-resident, has on deposit with the State Treasurer bonds not less in value than those of the company proposing to retire, the State Treasurer upon being satisfied of these facts shall, upon receiving a duly attested copy of the contract between the two companies by which the risks of retiring company are assumed by the other company, deliver to such company proposing to withdraw the bonds in his possession belonging to it.

We have no specific statutory provision as to withdrawals in case of a merger of two or more companies, but a merger may be considered re-insurance in contemplation of the statute referred to when the surviving company assumes all liabilities of each of the constituent companies entering such merger.

In paragraph No. 7 of the Agreement of Merger it is provided:

"And all rights of creditors and of liens upon the property of each of said companies shall continue unimpaired, and all debts not of record, duties and liabilities of each of said constituent companies, parties hereto, shall thenceforth attach to the surviving company and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it."

This is, in my opinion, a sufficient assumption by the surviving company of all the fixed liabilities for losses and for taxes and contingent liabilities under the policies of the Victory Insurance Company of Philadelphia, and upon the filing by the surviving company in the office of the Secretary of State of a copy of said agreement and charter, as required by law, you would be justified in releasing the deposit made by the Victory Insurance Company of Philadelphia to it, or its successor.

SECTION 2

SURETIES

January 25, 1933.

RETENTION BONDS ON DEPOSIT WITH STATE TREASURER
SUFFICIENT TO SATISFY UNPAID FINAL JUDGMENT*Dear Sir:*

I acknowledge receipt of your letter of the 21st instant, enclosing letter with reference to two judgments rendered against Robert Clay Hotel Corporation and the Fidelity and Casualty Company of New York.

I note that these judgments were rendered in the Circuit Court of Dade County on August 5, 1932.

Section 6303 of the Compiled General Laws provides that whenever final judgment has been rendered against any surety company on a fidelity or surety bond, and said surety company fails to pay the same within thirty days, notice of which is given to the State Treasurer, he shall retain the bonds required to be deposited by such surety company under Section 6302, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying the suit upon the surety bond.

The effect of this notice is that you could not thereafter allow the surety company to withdraw the bonds deposited with you until the said judgment is satisfied, but that you must hold same subject to the order of the Court. The judgments rendered in the Circuit Court of Dade County August 5th are final judgments; otherwise writs of error would not lie thereto. In case of writ of error either the trial court or the Supreme Court might stay the proceedings relating to the sale of the bonds until final decision is rendered on writ of error.

As I understand the decision of the Court in Board of Public Instruction of Dade County vs. Knott, 143 So. 735, it is that a judgment creditor serving notice of surety company's non-payment of judgment on the State Treasurer under Section 6303 acquires prior claim on securities deposited by said surety company only in cases where the surety company is solvent at the time of the service of said notice. I do not understand the holding of the court to be that the judgment creditor would acquire a prior claim by the service of notice in cases where the surety company is insolvent at the time of such service of notice, although this question was not definitely decided.

February 6, 1933.

FOREIGN SURETY COMPANIES—COMPLIANCE WITH SECTION
6290 TO 6308, C. G. L. 1927, IN WRITING PERSONAL
APPEARANCE BONDS IN U. S. COURTS*Dear Sir:*

This is in response to your request under date of January 7th for

SURETIES

my opinion as to whether or not you would be justified in issuing a license and certificate of authority to a surety company incorporated under the laws of another State for the sole purpose of writing personal appearance bonds in the United States Courts within the State of Florida, without requiring such company to make a deposit of \$75,000.00 in United States or State bonds or, in other words, to comply with the law governing surety companies as set out in Section 6290 to 6308, both inclusive, Compiled General Laws, 1927.

I beg to call your attention to opinion rendered by my predecessor in office, now Justice Fred H. Davis, under date of September 30th, 1930, covering this same matter, In Re: Grand Central Surety Company and its authority to write Federal Court bonds in Florida without complying with the Florida law. I concur in the opinion of Judge Davis, and which covers your question. I am clearly of the opinion that before any company can engage in this State in the writing public liability insurance policies, contracts or bonds, such company must first deposit with you bonds of the United States or bonds of any State of the United States the market value of which amounts to \$75,000.00.

June 19, 1933.

LIBERTY BONDS IN LIEU OF—SHOULD BE RELEASED AND
RETURNED TO DEPOSITOR

Dear Sir:

I note from your letter of the 16th instant that the Celo Securities Company, Inc., of Tampa, Florida, was licensed as a dealer under Chapter 14899, Acts of 1931, and was allowed to put up five One Thousand Dollar liberty bonds in lieu of a surety bond. Your request is for an opinion as to whether these bonds should be released in view of the holding of the Court in *Riley vs. Sweat*.

I have read the opinion in the case mentioned, and in my opinion the bonds deposited may and should be released and returned to the Celo Securities Company, Inc.

March 19, 1934.

SECURITIES OF INSOLVENT SURETY COMPANIES SHOULD BE
DELIVERED TO RECEIVER APPOINTED BY CIRCUIT
COURT OF LEON COUNTY

Dear Sir:

With your letter of the 17th instant you submit letter from the attorney for the Claim Department of National Surety Corporation of New York, together with a copy of letter from Mr. Robert J. Boone of Miami, in which Mr. Boone notifies the surety company that his client,

SURETIES

Fred W. Hosea, expects to hold the surety company liable for any loss or damage sustained by virtue of delivering securities pledged with you by the surety company.

In your letter you ask my opinion and advice as to whether anything heretofore done by you in the matter of turning over any part of the securities of Union Indemnity Company to the receiver of the Court appointed by the Circuit Court in and for Leon County, Florida, in any wise exposes National Surety Corporation to possible loss under your surety bond.

In turning over any securities to the receiver appointed by the Circuit Court of Leon County, you have done so pursuant to an order of the Court, which in my opinion would protect you.

April 3, 1934.

SECURITIES INSOLVENT SURETY COMPANIES SHOULD BE
DELIVERED TO RECEIVER APPOINTED BY CIRCUIT
COURT OF LEON COUNTY

Dear Sir:

I have your letter of March 31st with letter from Mr. S. P. Hutchinson, Attorney-in-Charge, Claim Division, National Surety Company of New York, together with a copy of letter from Mr. Robert J. Boone, Attorney, of Miami, Florida, addressed to National Surety Corporation under date of March 22, 1934.

The matters and things set out in Mr. Boone's letter were incorporated in his Motion for Rehearing and Motion for Amendment of the Alternative Writ of Mandamus in the case of State ex rel Vetter vs. Knott, which was just recently decided contrary to the contention of Mr. Boone.

With reference to the claim by Mr. Boone as to the unconstitutionality of Chapter 16248, Acts of 1933, (Senate Bill 288) the Court in its opinion said:

"There is no showing that the 1933 statute just referred to is unconstitutional as an impairment of relator's vested rights, since such rights as relator may have acquired may still be enforced by appropriate intervention in the chancery proceedings authorized by Chapter 16248, Acts of 1933."

As to the relator's remedy the Court said:

"The Court is of the opinion that relator's remedy is to seek intervention in the chancery proceedings pending under Chapter 16248, Acts of 1933, for the adjudication of the character and extent of its judgment therein, if any, with the award of such appropriate relief as the facts may warrant."

The Court has clearly and definitely settled the point that there

SURETIES

is no merit in Mr. Boone's contention. I am of the opinion, therefore, that it will be necessary for you to comply with the rule issued by the chancery court in and for Leon County, Florida, sometime ago to show cause why you should not turn over all of the funds to the Court's receiver.

April 11, 1934.

CANCELLATION OF BOND BY SURETY OF AN INDEFINITE AND
CONTINGENT LIABILITY AS TO FUTURE ACCRUING
LIABILITY IS PERMITTED

Dear Sir:

In your letter of the 10th instant, you ask whether the American Surety Company, surety on Bond No. 301169-B of Indiana Lumbermens Mutual Insurance Company, can relieve itself of further liability without your consent, either upon the expiration of the current certificate of authority issued to the fire insurance company (expiring March 1st), or upon any other date, and if so, whether the letter quoted in your letter is sufficient notice to relieve the company of its liability under the bond in question.

Your next question is as to your duty to require a fire insurance company, which has once given a surety bond acceptable to you, to substitute another bond or collateral security as a condition precedent to a continuance of its right to do business in the State or to renewal of the company's license or certificate of authority. The copy of the bond in question submitted with your letter is a continuing obligation without limitation as to the length of time the same shall run.

The weight of authority seems to be that where the surety is bound for an indefinite and contingent liability, the surety may terminate its further liability by giving reasonable notice to the principal and the obligee. I do not think under the form of the instant bond that the consent of either the principal or the obligee is essential to the cancellation or termination by the surety.

This, of course, would not affect any liability of the surety arising prior to the cancellation of the bond. If the surety has a right to terminate or cancel a bond of indefinite duration and contingent liability, I see no objection to having such a stipulation incorporated in the bond itself.

As to the second point, if the bond be terminated or cancelled by the surety, then the fire insurance company must of necessity again comply with the requirements of Section 6242 of the Compiled General Laws of Florida 1927, as a condition to the right to continue to do business under its present license, if the same be not expired, or as a condition to a renewal of its license.

SURETIES

June 11, 1934.

COUNTY CONVICT GUARDS AND CAPTAINS MAY HAVE
GROUP BONDS*Dear Sir:*

In your letter of the 8th instant you request my construction of Chapter 9203, Acts of 1923, relating to bonds required of county convict guards and captains. You propound three questions which I answer in their order as follows:

First: It is my opinion that the bonds required by Section 8550 of the Compiled General Laws of Florida 1927, which was enacted as Section 2 of Chapter 9203, Acts of 1923, may be written in group form, provided they are conditioned upon the performance of the duties and responsibilities of the guards and captains respectively and individually, and their compliance with all rules and regulations duly prescribed for their conduct, and provided such bond covers the individual liability of the guards and captains to the convicts for any injury or damage sustained by reason of the breach of the conditions thereof.

Second: The statute does not prescribe the tenure of the bonds under consideration, and your letter does not state whether they are usually written for a fixed or definite period, or whether they are indefinite and continuous. The weight of authority seems to be that where a surety bond is for an indefinite and contingent liability, the surety company may terminate its further liability thereunder by giving reasonable notice to the principal and obligee. This of course would not affect any liability of the surety arising prior to the cancellation of the bond. In case of termination or cancellation, another bond would be required. If the bond is of an indefinite tenure and contingent liability, the same could continue in force, so long as the premiums are paid and not cancelled.

The termination of the services of any particular guard or captain would terminate the bond as to such person, but the bond would continue as to other guards and captains until terminated by cancellation or termination of service.

July 2, 1934.

BLANKET ASSUMPTION OF ALL LEGAL LIABILITIES OF DEFUNCT
COMPANY BY SOLVENT COMPANY IS SUFFICIENT
COMPLIANCE WITH LAW*Dear Sir:*

This is in response to your communication of June 26th, wherein you enclose draft of proposed agreement between United States Casualty Company and New Amsterdam Casualty Company, and wherein you ask whether or not, in view of the recent decision of the Supreme Court in

SURETIES

the case of State ex rel Travellers' Indemnity Company vs. Knott, rendered March 2, 1934, this agreement is sufficient.

It is my opinion that the agreement constitutes a blanket assumption of all legal liabilities under any and all surety bonds and surety contracts heretofore executed by the United States Casualty Company as surety in the State of Florida. It is not necessary for there to be a specific assumption of liability under public liability policies of any nature, inasmuch as if the particular policy constitutes a surety bond or contract under the holding of the Supreme Court in the Union Indemnity Company case, liability in the instant proposed agreement would be assumed.

July 16, 1934.

SURETY BOND FOR TWO YEARS CANNOT BE TERMINATED
UPON GIVING OF PERSONAL BOND

Dear Sir:

Pursuant to your request, I have read the letter from the Continental Casualty Company to you under date of June 26, 1934, relative to the County Convict Warden bond of ———, to which letter is attached what purports to be a photostatic copy of the Application for Bond addressed to the Continental Casualty Company and signed by the said ———.

The letter recites that said Company became surety on the bond of ——— on March 6, 1933; that the said bond was written to cover the term of office of the applicant, which was for two years; that the premium covering the period for March 6, 1934-March 6, 1935, in the sum of \$25.00 remains unpaid; that the said bond has been returned to the Company, and that the principal has filed a personal bond in lieu thereof.

The note or memorandum attached to said letter indicates that you wish to be advised if the fact of ——— having given a personal bond in lieu of the Surety Company bond would release the Surety Company from liability on account of such bond.

In reply to this inquiry I beg to say that if the bond was for the entire two years of office, the Surety Company would still be liable for the unexpired term. The photostatic copy of application indicates that the bond was to be for the full two year term and the applicant agreed to pay \$25.00 immediately and \$25.00 on the 6th day of March in each year thereafter.

Under this situation it appears that the proper thing to be done is for the Surety bond to be returned and for the principal, Mr. ——— to pay the \$25.00 premium for the second and last year of his term, after which his personal bond may be released.

SURETIES

August 10, 1934.

LAW AUTHORIZES SURRENDER OF BONDS BY STATE TREASURER
IN RETURN FOR RECEIVER'S CERTIFICATE*Dear Sir:*

This is in response to your communication of the 9th instant, wherein you advise that you now hold certain bonds of the Chicago Joint Stock Land Bank, pursuant to action taken under Chapter 14653, Acts of 1931. The said Land Bank has now gone into liquidation, and you have been served with notice pursuant to the provisions of Section 29 of the Federal Farm Loan Act as amended, calling upon all persons having claims, including bonds issued by the said bank, to present their claims to the receiver, and notifying you also that bond holders, in proving their claims, must deliver their bonds to the receiver, in return for which they will receive a receiver's certificate.

You ask whether or not you have authority to so part with possession of these bonds, in return for the receiver's certificate.

It is my opinion that the said Acts of 1931 contemplates the doing of everything that is necessary to liquidate the securities, and that you are therefore authorized to proceed in accordance with the notice, by surrendering the bonds in return for the receiver's certificate.

August 14, 1934.

FINE AND COST—BONDSMEN ARE NOT RELIEVED OF LIABILITY
BY REASON OF THE FACT THAT DEFENDANT SERVED
TIME IN LIEU OF FINE*Dear Sir:*

I am in receipt of your letter of the 8th instant relative to 90 day fine and cost bond under Sections 8426 and 8427, Compiled General Laws of Florida, 1927.

In answer to your inquiries, I beg to advise as follows:

1. When a bond so given is not paid on or before the expiration of 90 days from the date of its execution, it becomes the duty of the Sheriff to return the bond to the Court in which the conviction occurred endorsed "not paid," and to take the person convicted into custody and to cause such person to begin the service of the sentence as imposed by the Court without further orders of procedure.

2. Such imprisonment and even a complete service of the sentence would not relieve the bondsmen from liability of the payment of the fine and costs.

3. If, after such imprisonment, the bond is paid, together with the additional cost which accrued by reason of the default in the payment of the bond, the prisoner would be entitled to discharge.

4. A person imprisoned in the County Jail for failure to pay a

SURETIES

fine and cost, or either, under sentence imposed, upon conviction of crime, is entitled to receive a credit on such fine and cost, or either as the case may be, in proportion to the time such person may be imprisoned. (See Sec. 8557, C. G. L.) This statute, however, does not relieve the surety from liability for payment of the entire amount of the bond.

September 12, 1934.

FOREIGN SURETY COMPANIES—APPOINTMENT OF RECEIVER—
DOES NOT EFFECT SECTION 6294, COMPILED
GENERAL LAWS 1927

Dear Sir:

This is in response to your communication of the 10th instant, wherein you advise that Independence Indemnity Company, a Pennsylvania corporation, and Public Indemnity Company, a New Jersey corporation, were both authorized to do business in this State, and had complied with Section 6294, Compiled General Laws of 1927, with reference to the designation of the State Treasurer as a person upon whom process may be served. You also advise that subsequent thereto International Reinsurance Corporation, a Delaware corporation, never authorized to transact business in Florida, re-insured the liabilities of these two companies.

You ask whether or not the appointment of receivers for International Reinsurance Corporation had any effect upon the applicability of said Section 6294 to the Independence Indemnity Company and Public Indemnity Company.

It is my opinion that the appointment of receivers for International Re-Insurance Corporation had no effect whatsoever upon the applicability of this Section to the said Independence Indemnity Company and Public Indemnity Company, and that following such appointment, process against the said latter companies could properly be served upon the State Treasurer.

I do not understand that I am called upon to express any opinion with reference to the appointment of ancillary receivers for Independence Indemnity Company and Public Indemnity Company under Chapter 16240, Acts of 1933 (Senate Bill No. 288), and the effect thereof with reference to this Section.

September 17, 1934.

FINE AND COSTS—WHEN SAME ARE NOT PAID EXECUTION SHALL
ISSUE BY THE CLERK AS IF THERE HAD BEEN
JUDGMENT AT LAW

Dear Sir:

I am in receipt of your letter of the 15th instant, with further ref-

SURETIES

erence to the above mentioned Sections of the Compiled General Laws of Florida, 1927. You call attention to the provisions of Section 8427 requiring the Sheriff when such bonds are not paid to endorse on the same that default has been made in the payment and having signed such endorsement file such bond with the Clerk of the Court in which judgment was rendered.

You then make inquiry upon what official rests the duty of seeing that the bondsmen are required to pay the bond.

Your attention is called to the following language in the latter part of Section 8427:

"And the Clerk shall forthwith issue execution for the amount of the fine and cost against the security or bail, as if there had been judgment at law on such bond, and the same proceedings shall be had as in cases of other executions, and the person convicted shall be liable to be proceeded against, as if no such bond had been given, until the same has been fully paid and satisfied."

For any further details in regard to such proceedings, I refer you to your County Attorney.

September 18, 1934.

SECURITIES OF INSOLVENT SURETY COMPANIES SHOULD BE
DELIVERED TO RECEIVER APPOINTED BY CIRCUIT
COURT OF LEON COUNTY

Dear Sir:

This is in response to yours of the 15th instant, wherein you enclose the proposed assignment to one D. M. Lowry as Receiver, of certain securities deposited with you by Constitution Indemnity Company under Sections 6302 and 6303, Compiled General Laws of 1927; and authorizing that the same be registered in the name of such Receiver.

You hand me also a photostatic copy of the power of attorney, pursuant to which these securities were deposited with you under date of November 17, 1926, and certified copy of order appointing the said Lowry as Receiver, which order was entered under date of August 26, 1933, by the Circuit Court of Leon County in a certain cause wherein George S. Van Schaick, as Superintendent of Insurance of the State of New York and Liquidator of the business and affairs of Lloyds Insurance Company of America, a corporation, is complainant, and W. V. Knott as State Treasurer of the State of Florida and Ex Officio Insurance Commissioner of the State of Florida, is defendant, the same being numbered 3224 In Chancery.

It is my understanding that you have already, in compliance with the said order directing you to do so, turned over the said securities to the

SURETIES

said receiver, and it is my opinion that you are authorized to sign the proposed assignment and transfer to him, and authority to have the said securities registered in his name.

October 11, 1934.

STATE TREASURER NOT AUTHORIZED TO ACT AS PLEDGEE OF
COLLATERAL BY A BANK TO SECURE A DEPOSIT BY A
CLERK OF COURT IN SUCH BANK

Dear Sir:

This is in response to your inquiry, at which time you handed me correspondence passing between you and a Clerk of the Circuit Court. You have asked for your authority to accept a pledge of collateral by a bank to secure a deposit by a Clerk of the Circuit Court in such bank.

I beg to advise that except under Chapter 15996, Acts of 1933, now appearing as Section 4355, Sub-sections (1)-(3), Compiled General Laws of 1927, 1934 Supplement, with reference to moneys in the registry of a court, you have no authority to act as the pledgee of such securities. It appears that if the Clerk of the Circuit Court acts to avail himself of Chapter 13576, Acts of 1929, Section 8, now appearing as Section 6079, Compiled General Laws of 1927, 1934 Supplement, the Comptroller alone has authority in the premises.

November 22, 1934.

CORPORATIONS ACTING AS SURETY ON BOND MUST QUALIFY
UNDER STATE LAW

Dear Sir:

In your letter of the 21st instant, you state that a Bridge & Tunnel Company and its assignee, have presented to you a bond required under Chapter 16733, Special Acts of 1933, with a Corporation as surety.

You state that the Corporation, the surety on said bond, is not qualified with the State Treasurer as a surety company, and that the question arises whether said company is legally qualified to become surety on said bond. By Section 6292 of the Compiled General Laws of Florida 1927, all surety companies whether incorporated under the laws of this or any other State, and their agents, are prohibited from directly or indirectly transacting any surety business in this State, and from procuring or securing applications for suretyship upon bonds of any person or corporation, unless and until they have first obtained a certificate of authority from the State Treasurer by qualifying with the State Treasurer as in said Section 6292 and 6293 provided and required.

It follows, therefore, that if the said Corporation has not qualified with and obtained a certificate of authority from the State Treasurer, it cannot legally become surety on said bond or accepted as such.

SURETIES

October 1, 1934.

CLERK CIRCUIT COURT NOT REQUIRED TO FILE AND RECORD
MANDATE OF SUPREME COURT WITHOUT COMPENSATION*Dear Sir:*

Replying to your letter of the 26th instant, with reference to the right of the Clerk of the Circuit Court to charge \$1.00 for the filing and recording of the mandate of the Supreme Court in the case referred to by you, I beg to advise that so far as my investigation discloses, there is no rule or statute specifically requiring either the filing or recording by the Circuit Court Clerk of mandates issued by the Supreme Court and transmitted by the Clerk thereof.

It is my opinion that the Clerk of the Circuit Court can be compelled to perform only such duties as are specifically imposed upon him by statute, and at such compensation, if any, as the statute provides. If other services are desired to be performed by the Clerk, it is a matter purely between him and the party desiring such services.

I understand that the practice is to have the mandate of the Supreme Court filed and recorded in some if not all of the counties. In the absence of either statute or rule requiring this service, the party desiring such service would have no right to demand same without payment therefor.

Rule 26 of the Supreme Court provides that in case of dismissal of any cause, or the affirmance or reversal of any judgment, decree, or order, it shall be the duty of the Clerk immediately after the expiration of fifteen days from the filing of the order, judgment or decree of the Supreme Court, to issue, record, and transmit such mandate or process as may be directed by the Supreme Court, or required by law or the rules of the Court, to the Clerk of the Circuit Court of the county from which the appeal was taken or to which the writ of error was directed, but there is nothing therein contained requiring either the filing or recording of such mandate.

The only statute referring to mandate from the Supreme Court is Section 4641, which merely requires the Clerk of the Supreme Court in all cases wherein the judgment or decree of the lower Court is reversed or modified, and in which there is an opinion written, to send down along with the mandate of the Supreme Court to the Clerk of the Circuit Court a correct copy of the opinion of the Supreme Court, which the Clerk of the Circuit Court shall file in the records and files of the case. But again there is no specific requirement for the filing or recording of the mandate of the Supreme Court.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SURETIES

October 24, 1934.

BILLS FOR SERVICES SHOULD BE PAID WHEN REQUESTED BY
STATES ATTORNEY AND APPROVED BY JUDGE

Dear Sir:

I am in receipt of your letter of the 23rd instant, enclosing two statements from _____ to Volusia County for services as Special Reporter in two cases approved by Judge _____, as Judge Pro Hac Vice. You state that the first statement is for testimony taken in the case instituted by the State Attorney for the purpose of padlocking a night club and that the second statement is for testimony taken in a habeas corpus case.

In reply your attention is called to Section 4873 and 4879, Compiled General Laws of Florida, reading as follows:

"4873. "The official court reporter shall, upon the request of the presiding judge, or that of the State attorney or defendant, report the testimony and proceedings, with objections made, the ruling of the court, the exceptions taken, and oral or written charges of the court in the trial of any criminal case in the circuit court, and the testimony in any preliminary hearing when so requested by the circuit judge or State attorney of that circuit, and shall report the testimony and proceedings with objections made, the rulings of the court, the exceptions taken, and oral or written charges of the court in the trial of any civil case in said court upon the demand or request of the attorney for either party."

4879. "In case any official reporter shall not have been appointed in any circuit, or where the official reporter is disqualified or unable to perform his duties, it shall be within the discretion of the judge to appoint a special reporter in any case, civil or criminal, upon demand of any of the parties therefor; said special reporter shall perform the same services, receive the same pay in the same manner as the official reporter."

Your attention is further called to 15 Ruling Case Law 521, Judges 11, containing the following language with reference to Judges:

"The duties of the office include all those which fairly lie within its scope, those which are essential to the accomplishment of the main purposes for which the office was created, and those which, although incidental and collateral are germane to or serve to promote or benefit the accomplishment of the principal purposes."

The State Attorney is required by statute to represent the State in habeas corpus proceedings and in my opinion Section 4873, above quoted, authorizing the services of a Court Reporter "in the trial of any criminal case" may properly be construed to include the trial of habeas corpus proceedings. Said Sections 4873 provides specifically for the services of

SURETIES

a Court Reporter in taking testimony in preliminary hearings.

In consideration of the above, together with the fact the State Attorney required the services performed and the Circuit Judge approved the same, it is my opinion that said bills are valid claims and should be paid.

November 2, 1934.

COUNTY COMMISSIONERS ARE THE CUSTODIANS AND CAN MAKE
JUSTICE OF PEACE SURRENDER POSSESSION OF AN
OFFICE THEREIN

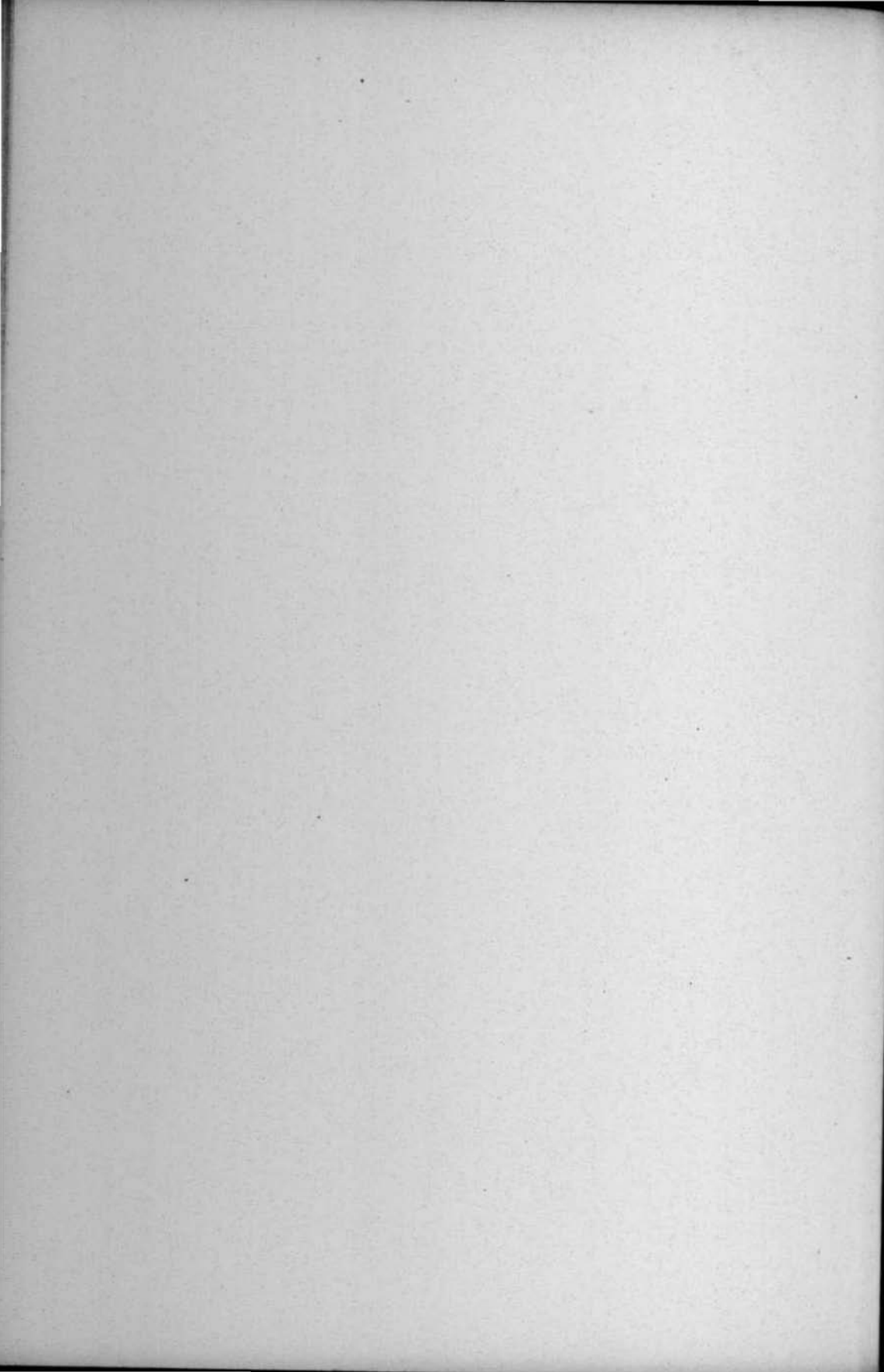
Dear Sir:

I am in receipt of your letter of the 31st ultimo, with reference to a Justice of the Peace occupying offices in the Court House and making inquiry if the Board of County Commissioners have authority to demand his surrender of possession of the offices which he is now occupying.

In reply I beg to say I know of no statutory authority granted to Justices of the Peace to occupy office space in the County Court House but where there is sufficient room for the County Officers and also for allowing the local justice of the Peace to occupy some space in the Court House, I see no objection to the same.

The County Commissioners are the custodian of County property and are authorized to make such orders concerning the care of the same as may be deemed expedient. See Section 2153, Compiled General Laws of Florida, 1927.

Answering your specific inquiry, I beg to say in my opinion the County Commissioners are authorized to demand the surrender of possession of the offices which the Justice of the Peace is now occupying.

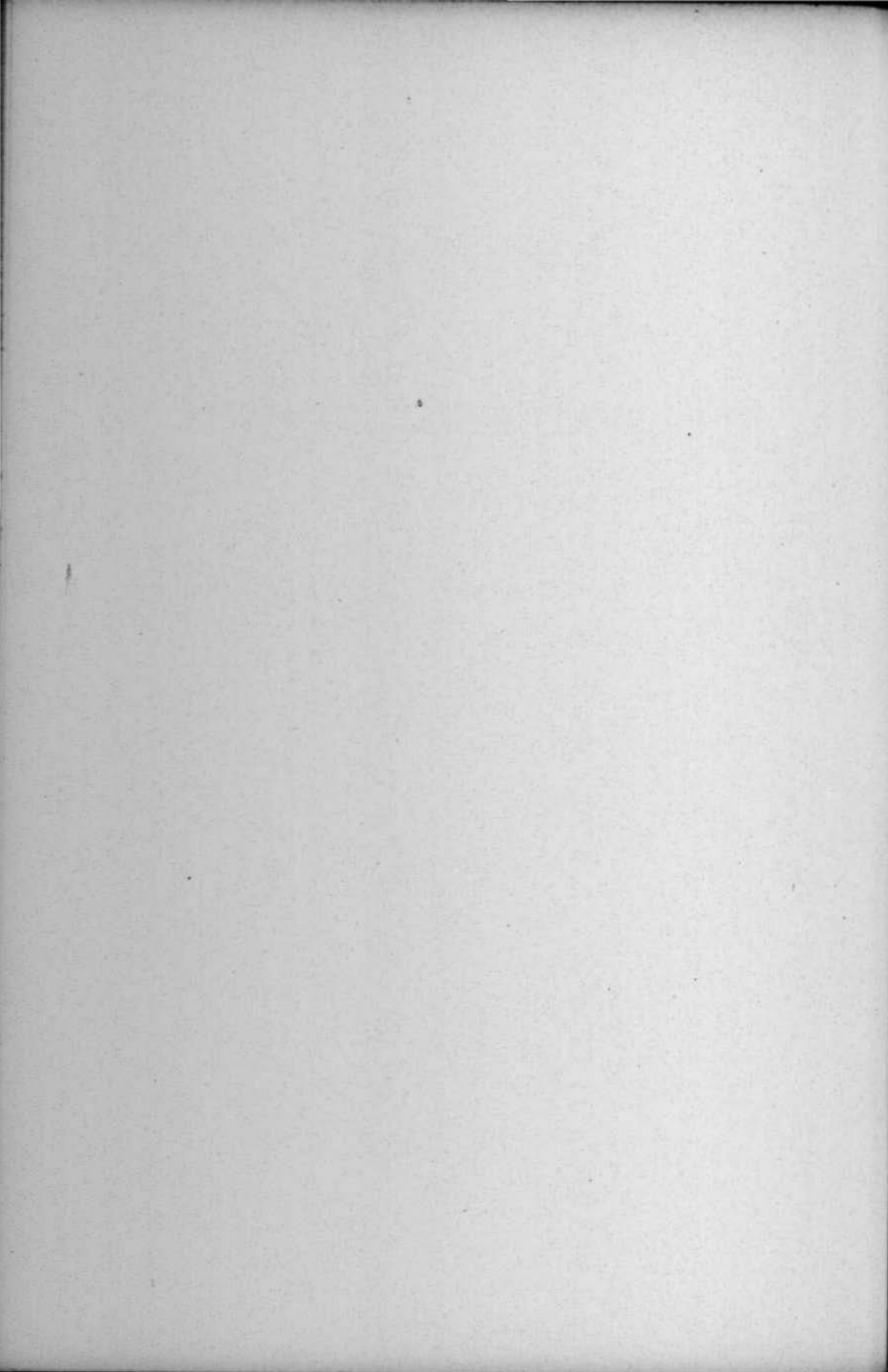


CHAPTER XI

CONSERVATION DÉPARTMENT

Page

Section 1. Hunting	495
Section 2. Fishing	499
Section 3. Miscellaneous	506



CHAPTER XI

CONSERVATION DEPARTMENT

SECTION 1

HUNTING

November 7, 1933

APPLICATION OF LAW IN RE HUNTING IN CLOSED TERRITORY

Dear Sir:

This will reply to your letter of November 4th, in which you ask whether or not under the provisions of Chapter 13644, Acts of 1929, a person who violates Section 4 of said Chapter may lawfully be convicted for hunting in territory closed under the provisions of said Section and Chapter.

Under the provisions of the 1929 Act, the State Game Commissioner with the advice and consent of the Governor is authorized to close any county or any part of a county to the hunting of game or the taking of fish. Section 70 of the 1929 Act provides the penalty to be imposed upon any person found to be guilty of violating any of the provisions of said Act. Section 4 is as much a part of the same as any other Section thereof.

The Legislature of 1933 enacted Chapter 16178, which creates the State Board of Conservation, and the Act of 1933 provides that all of the duties, powers and authority held by the State Game Commissioner at the time of the passage of the Act should be conferred upon the State Board of Conservation. Therefore, in view of the provisions of the 1933 Act, it seems to me that before any territory can be closed to hunting and fishing under the provisions of Section 4 of Chapter 13644, Acts of 1929, it would be necessary for the State Board of Conservation with the advice and consent of the Governor to adopt and promulgate rules and regulations for the closing of any particular territory as authorized by Section 10 of Chapter 16178, Acts of 1933.

Assuming that the Act of 1933, conferring all of the duties, powers and authority theretofore vested in the Game Commissioner to the State Board of Conservation, would be held by a court of competent jurisdiction to be a valid enactment, it is my opinion that if the State Board of Conservation should follow the procedure for closing territory as is required by Section 4 of Chapter 13644, Acts of 1929, and a person should be found to be guilty of hunting game or taking fish in the territory officially closed, such person would be subject to the penalty provided for in Section 11 of Chapter 16178, Acts of 1933.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
HUNTING

November 16, 1933

CLOSED TERRITORY; PENALTY FOR VIOLATING

Dear Sir:

Pursuant to your verbal inquiry of this date, permit me to say it is my opinion that territory heretofore closed to hunting and fishing under the provisions of Section 4 of Chapter 13644, Acts of 1929, is now closed and will remain closed unless and until the State Board of Conservation should take appropriate steps to open the closed territory. And it is further my opinion that if a person should be found to be guilty of hunting game or taking fish in territory heretofore officially closed, such person would be subject to the penalty provided for in Section 11 of Chapter 16178, Acts for 1933.

July 26, 1934

MAY APPOINT HONORARY GAME WARDENS WHEN GOVERNOR
DEEMS NECESSARY

Dear Sir:

I am in receipt of your letter of July twenty-fourth calling attention to Chapter 13644, Laws of Florida, Acts of 1929, which provides that the State Game Commissioners may appoint honorary game wardens who shall serve without compensation and who shall not be impowered to carry arms. You make inquiry if there is any provision in Chapter 16178, Acts of 1933, which repeals that part of Section 3 of Chapter 13644, authorizing appointment of honorary game wardens. You make further inquiry as to the authority of such game wardens.

In reply I beg to say that the above mentioned provision in Section 3 of Chapter 13644 does not appear to have been repealed, but the same appears to be modified, as to the matter of appointments, by Section 2 of Chapter 16178, Acts of 1933. Under said Section it appears that the Supervisor of Conservation may appoint honorary game wardens, if deemed necessary by the Governor.

As to the legal authority of such honorary game wardens, I beg to say that in my opinion they would have the same as any other deputy game warden or conservation agent.

September 19, 1934

FEDERAL STATUTES CONTROL AS TO MIGRATORY BIRDS

Dear Sir:

I am in receipt of your letter of the 18th instant, reading as follows:

"Please advise me if in your opinion the Federal Government has

HUNTING

absolute and entire control over all migratory waterfowl, with complete authority to promulgate regulations concerning same."

In reply I beg to quote you Sections 703, 704 and 708 of the United States Code Annotated, Title 16:

"703. **TAKING, KILLING, OR POSSESSING MIGRATORY BIRDS UNLAWFUL.** Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful to hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatever receive for shipment, transportation or carriage, or export, at any time or in any manner, any migratory bird, included in the terms of the convention between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), or any part, nest, or egg of any such bird."

"704. **DETERMINATION AS TO WHEN AND HOW MIGRATORY BIRDS MAY BE TAKEN, KILLED OR POSSESSED.** Subject to the provisions and in order to carry out the purpose of the convention, the Secretary of Agriculture is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the convention to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President."

"708. **STATE OR TERRITORIAL LAWS OR REGULATIONS.** Nothing in section 703 to 711 of this title shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said convention or of said sections, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title."

From the above you will note that the Federal statutes provide for Federal regulations as to hunting migratory birds. You will note also

BIENNIAL REPORT OF THE ATTORNEY GENERAL
HUNTING

that the Federal statutes shall not be construed to prevent the several States from making or enforcing of laws not inconsistent therewith.

In this situation it would appear that the Federal statutes will control when there is any conflict between such statutes and State statutes.

When the Federal regulations, under the Federal statutes, prohibit hunting migratory birds on certain days there can be no hunting on such days, although permitted by the State statutes. In other words, there can be no hunting on any days except such days as are permitted by both the Federal statutes and regulations and the State statutes.

September 24, 1934

LAKE OKEECHOBEE WITHIN BOUNDARY OF PALM BEACH COUNTY

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry if for the purposes of hunting Lake Okeechobee is considered in Palm Beach County.

In reply I beg to say that under Section 65, Compiled General Laws of Florida, in defining the boundaries of Palm Beach County, Lake Okeechobee is within such boundaries. Specifically answering your inquiry, you are advised that for the purposes of hunting, Lake Okeechobee is in Palm Beach County.

SECTION 2

FISHING

September 11, 1933.

STATE BOARD OF CONSERVATION HAS EXCLUSIVE POWER OVER
LEASING WATER BOTTOMS*Dear Sir:*

Replying to your favor of August 31st, in which you ask to be advised whether or not under the provisions of Section 8 of Chapter 16178, Acts of 1933, the Commissioner of Agriculture alone may execute leases on water bottoms for oyster culture, permit me to say the Section and Chapter above referred to provide that the State Board of Conservation shall have and exercise the exclusive power over the water bottoms of the State of Florida, not held under some grant or alienation heretofore made, and any bottoms heretofore granted, if cancelled or vacated, may be leased by said Board for the purpose of giving the exclusive rights to plant oysters or clams thereon.

The Act further provides that the said Board may lease any water bottoms in the State of Florida to any person, firm or corporation, irrespective of residence or citizenship, and upon such terms, conditions, and restrictions as the said Board may impose, and without limitations as to the number of acres of such water bottoms which any person or person, firm or corporation may lease, hold or control, except insofar as the said Board, in its discretion, may fix.

In view of the provisions of the law, it is my opinion that where water bottoms are leased by the State under the provisions of the Chapter above mentioned, each member of the Board must in the future sign all such leases, and the authority to execute such leases cannot be delegated to any one member of the Board.

September 11, 1933.

STATUTE AUTHORIZING SHELL FISH COMMISSIONER TO SEARCH
AND SEIZE WITHOUT WARRANT NOT APPLICABLE TO
COUNTY SHERIFF*Dear Sir:*

Replying to your letter of September 7th, in which you request opinion on the authority of sheriffs and their deputies to board ships with and without search warrants, or make arrests under the Sponge Laws of the State of Florida, permit me to say Section 8086, Compiled General Laws, reads as follows:

"The Shell Fish Commissioner shall have authority without warrants to board and search any vessel or boat, or enter any sponge house, warehouse, or other building in which sponges are

FISHING

kept, in which he may have cause to believe sponges under size are stored, and the Shell Fish Commissioner or his deputies are hereby constituted State police officers with full authority to arrest without warrant anyone violating any of the provisions of this Article."

Neither this section nor the following sections appear to confer any express authority upon a sheriff and/or his deputies, but refer solely to the Shell Fish Commissioner and his deputies. However, you are no doubt familiar with the provisions of law which authorize any sheriff or other police officer to make arrests without warrant for crimes committed in his presence. I am unable, of course, to say what a court of competent jurisdiction would decide if the matter should be tested therein.

September 16, 1933.

**VALIDITY OF APPLICATION FOR LEASING OF WATER BOTTOMS
PENDING AT TIME OF PASSAGE OF THE LAW**

Dear Sir:

This refers to your recent favor; in reply I would state that the Conservation Act, Ch. 16178, passed by the Legislature of 1933, provides, among other things, as follows:

"All applications heretofore made and now pending for the leasing of water bottoms in the State of Florida, which have not been consummated and lease executed thereon, prior to the passage of this Act, are hereby declared valid as to all applications pending on which the survey fee has been deposited prior to January 1st, A. D. 1933. Provided nothing herein contained shall give the said Board authority to lease any of the Sponge beds of the State.

"Provided, no lessee of the State shall be permitted to re-lease, sub-lease, sell or transfer any such bottoms or property.

"Provided, further nothing herein contained shall apply to leases heretofore granted or for which applications have heretofore been filed with the Shell Fish Commission of the State of Florida, and for which survey deposits were made prior to January 1st, 1933."

This section of the law clearly explains itself, and if applications have been filed in accordance therewith, they are then, legislatively, to be declared valid.

FISHING

November 2, 1933.

TRANSPORTATION INTO STATE NOT PROHIBITED

Dear Sir:

Replying to yours of November 1st, relative to shipment of oysters into the State of Florida, permit me to say Section 1236 of the Revised General Statutes of Florida, the same being Section 1794, Compiled General Laws of Florida, 1927, was originally Section 7 of Chapter 6532, Laws of Florida, Acts of 1913, the title of that Act reads as follows:

"An Act to encourage, protect, regulate the shell fish industry of the State of Florida."

It is clear from the language of the statutes that there is nothing contained therein which can fairly be construed to prohibit the transportation of oysters into this State by a common carrier where the oysters were delivered to the carrier for shipment in a foreign State. The laws of Florida pertaining to the subject were intended only to prohibit the transportation of oysters by common carriers from the State of Florida, or from one point to another within the State, during the closed season.

November 16, 1933.

CLASSIFICATION OF

Dear Sir:

I am in receipt of your letter of the 9th instant relative to license of fish dealers, the body of which reads as follows:

"I would thank you to advise me whether or not a wholesale fish license is due if several fishermen form a Corporation produce their own fish and only sell to wholesale firms. They do not buy fish or retail them. They class themselves the same as the farmer on producing and do not feel that it is right to pay this Department a wholesale license. Only stockholders of the Corporation are allowed to participate in the business."

Your letter does not indicate whether you refer to fresh or salt water dealers. If you refer to fresh water dealers, answer to your inquiry is found in Section 31, Chapter 13644, Laws of Florida, Acts of 1929, defining dealers in the following language:

"A wholesale dealer shall be considered one who sells or ships fish by the barrel or half-barrel, or in bulk * * *."

"A retail dealer shall be considered any one who sells fish or supplies in any manner direct to the consumer or wholesale dealer * * *."

From the above definitions it appears that the parties mentioned in your letter would be wholesale fresh water fish dealers if they sell or ship fresh water fish by the barrel or half-barrel or in bulk.

If your inquiry relates to salt water fish dealers your attention is

FISHING

directed to Section 1827, Compiled General Laws of Florida, 1927. The first part of said Section relating to amount of license appears to be superseded by Section 1866, Compiled General Laws of Florida, 1927, being Section 7 of Chapter 10123 of 1925.

The last part of said Section 1827 defines salt water fish dealers as follows:

"A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish, directly to the consumer."

Under such definition it appears that the parties mentioned in your letter do not come under the definition of either a wholesale or retail salt water fish dealer.

November 21, 1933

APPROPRIATION FOR PLANTING AND REHABILITATING NATURAL REEFS OR BEDS A CONTINUING APPROPRIATION

Dear Sir:

Answering your letter of the 16th instant, I beg to say in my opinion the appropriation for planting and rehabilitating natural oyster reefs or oyster beds, in Chapter 14530, Laws of Florida, Acts of 1929, is a continuing appropriation, and any unexpended balance of such appropriation is available for use of the Conservation Commission to be expended for the purposes of and in accordance with the provisions of said Act.

November 21, 1933

TAKING BY USE OF DIVING BELL PROHIBITED

Dear Sir:

I am in receipt of your letter of the 20th instant, making inquiry as to the use of a machine for the purpose of gathering sponges, the machine being a bell operated on the same principle as a diving bell, swinging from a surface boat and moving along within two or three feet of the floor of the ocean, in which the diver sits and gathers sponges with a knife or hook, much the same as if he were walking.

The only statute found on the subject is Section 8087, Compiled General Laws of Florida 1927, reading as follows, the amendment by Chapter 14545, Acts of 1929, being declared invalid in the case of *Lipscomb vs Gialourakis*, 101 Fla. 1130, 133 So. 104:

"It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the

FISHING

Straits of Florida or other waters within the territorial limits of the State of Florida, *diving suits, helmets, or other apparatus used by deep sea divers.*

"Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment."

Without a complete knowledge of the machine in question, and its operation, I could not express a definite opinion on the subject of your inquiry, but from its nature and operation as recited in your letter, I am inclined to think that the courts would hold that the use of such machine would be unlawful under the provisions of Section 8087 above quoted. If the machine is an "apparatus used by deep sea divers," the use of same, in my opinion, would be clearly unlawful.

April 11, 1934

CLOSED SEASON IN MANATEE, PINELLAS AND HILLSBOROUGH
COUNTIES GOVERNED BY GENERAL LAW AND NOT
SPECIAL LAW

Dear Sir:

I am in receipt of your letter of the 10th inst., calling my attention to Chapter 7600 of 1917, a Special Act regulating the catching and shipment of stone crabs in Manatee, Pinellas and Hillsborough Counties. You also call my attention to Chapter 13616 of 1929, a General Act on the same subject applying to the State generally.

You make inquiry if the counties of Manatee, Pinellas and Hillsborough are governed by the closed season prescribed by said Special Act, Chapter 7600 of 1917, or by the closed season prescribed by the later General Act, Chapter 13616 of 1929.

The rule is that a general law does not repeal or modify a Special law unless the General Act is a general revision of the whole subject or unless the two Acts are so repugnant as to indicate a legislative intent that one should repeal the other.

The later General Act, Chapter 13616 of 1927, appears to be a general revision of the whole subject of catching and shipping stone crabs, and Section 4 of said Act provides that "All laws and parts of laws in conflict herewith are hereby repealed."

In my opinion the closed season on stone crabs prescribed for Manatee, Pinellas and Hillsborough Counties by Chapter 7600 is no longer effective, but that said counties, as well as other counties of the State are governed by the provisions of Chapter 13616 of 1929 as to such closed season.

FISHING

April 16, 1934

NO LAW REGULATING CATCHING HORSESHOE CRABS
OR DISPOSITION THEREOF*Dear Sir:*

I am in receipt of your letter of the 12th inst., making inquiry if there is any State law or regulation relating to the method or manner of catching horseshoe crabs or king crabs, or the prohibition of same for the manufacture of fertilizer.

In reply I beg to say I do not know of any law or regulation relative to horseshoe crabs or king crabs. The dictionary defines king crab as "horseshoe crab." The horseshoe crab is not edible and I see no reason why the same may not be put to some useful purpose such as making fertilizer.

In answer to your further inquiry, I beg to say that I have found no Federal statute on the subject.

June 23, 1933

CLOSED SEASON FOR SHIPPING MULLET 11:00 P. M. DECEMBER 6,
INCLUDING 5 DAYS GRACE*Dear Sir:*

Replying to your letter of June 21st, with which you enclose letters from the General Agent, Atlantic Coast Line Railway, on the subject of closed season for mullet in Florida, permit me to say the period of time in which mullet may not be shipped in Florida begins at 12:01 a. m., December 2nd, and ends at 11:59 p. m., January 19th.

The five days of grace allowed for acceptance of fish for shipment by carriers, permits acceptance of fresh fish up until 11:00 P. M., December 6th.

July 5, 1934

USE OF CAST NET PROHIBITED UNLESS IN ENCLOSED PIT OR
FOR CATCHING BAIT*Dear Sir:*

I am in receipt of your letter of the 3rd inst., referring to Sections 23 and 24 of Chapter 13644, Laws of Florida, Acts of 1929, and making inquiry if it is a violation of the law for a person to use a cast net for catching fish in an old phosphate pit.

In reply I beg to say in my opinion the use of a cast net for catching fish in an old phosphate pit would be a violation of Section 23 of the above mentioned Act, unless the phosphate pit is enclosed or unless the nets are used solely for catching bait, under the provisions of Section 24 of said Act.

FISHING

August 8, 1934

ILLEGAL TO STORE, PROCESS OR SHIP DURING CLOSED SEASON

Dear Sir:

I am in receipt of your letter of the 6th instant with reference to the closed season on mullet and stating that you have been asked whether a permit can be obtained:

"1st: To store mullet during the closed season in licensed refrigerator warehouses, in the State of Florida.

"2nd: Whether fish so stored might be withdrawn during the closed season for purposes of processing, smoking or salting.

"3rd: Whether fish so withdrawn and processed during the closed season may be shipped out of the State for sale during the closed season."

In reply I beg to say that in my opinion all of the above mentioned proposals would be illegal under the provisions of Sections 2 and 3 of Chapter 10123, Acts of 1925, now Sections 1861 and 1862, Compiled General Laws of Florida, 1927.

September 14, 1934

CHAPTER 14511, ACTS 1929, CONTROLS WITH REFERENCE TO
MULLET IN OKALOOSA COUNTY, CHAPTER 10123, ACTS 1925,
CONTROLS WITH REFERENCE TO OTHER COUNTIES

Dear Sir:

I am in receipt of your letter of the 12th instant, calling my attention to Chapter 10123, Laws of Florida, Acts of 1925, which is an Act relating to salt water fisheries and is of general application. You also call my attention to Chapter 14511, Laws of Florida, Acts of 1929, relative to salt water fisheries in counties having a population of not less than 9,775 persons nor more than 9,800 persons according to the last State Census, which is by its terms applicable only to Okaloosa county. You make inquiry as to which Act has precedence with reference to mullet.

In reply I beg to say that Chapter 14511 of 1929 controls with reference to mullet in Okaloosa county. Chapter 10123 controls with reference to mullet in other counties.

SECTION 3

MISCELLANEOUS

January 14, 1933.

METHOD OF RELIEF FROM JUDGMENT INCURRED IN
DISCHARGE OF DUTY*Dear Sir:*

I beg to return herewith letter of the State Game Commission, to you under date of January 12th.

It seems from the facts set up, that the District Commissioner, and his Deputy, arrested certain parties for illegal fishing with nets in the fresh waters of Florida. These men plead guilty. Then it seems that the Court failed to pass an order of confiscation of the nets, and the owners thereof sued the District Commission and obtained a judgment. That the matter was so handled that an appeal cannot now be effected, as the testimony was not taken and no record made.

It is almost inconceivable how a judgment could be entered against the District Commissioner under the above statement of facts, nevertheless, if this judgment has been entered, it occurs to me that the District Commissioner would probably be bound to pay the same. I know of no authority whereby the State Game Commissioner can refund to the District Commissioner the amount of this judgment, or that it can take care of the judgment against him. Under the facts, it seems to me that he should have some relief. If these facts are unquestioned and the Legislature should see fit, they of course could reimburse him, but other than this, I know of no method by which he can be compensated. It certainly seems most unfair and wrong when a man undertakes to perform his duty, which it seems is a fact in this instance, that he should be subjected to a judgment such as this.

July 31, 1933.

CONFISCATION AND SALE NOT AUTHORIZED BY CONSERVATION
DEPARTMENT*Dear Sir:*

Replying to yours of July 25th, permit me to say there does not appear to be a provision of law authorizing officers of your Department to confiscate and sell fire-arms found on persons who are arrested for violation of the Game Law.

I will suggest that in so far as it is possible to do so your Department should return to the owners all fire-arms which have heretofore been confiscated and which are now in the possession of the Department.

MISCELLANEOUS

November 17, 1933.

FUNDS FOR OPERATION OF GEOLOGICAL DEPARTMENT SHOULD
COME FROM FUNDS COMING TO CONSERVATION
DEPARTMENT*Dear Sir:*

I am in receipt of your letter of the 16th inst., making inquiry as to whether the Geological Department should be taken care of by the revenue collected by the Game and Fresh Water Fish Department and the Shell Fish Department or from the appropriation for the Geological Department in Chapter 15858, Acts of 1933.

In reply I beg to say that the answer to your inquiry appears in Sections 5 and 6 of Chapter 16178, Acts of 1933, reading as follows:

"Section 5. All moneys in, amounts of money due and afterwards accruing to the various funds handled or controlled by the departments or offices abolished by this Act, shall upon the effective date of this Act, be transferred to one fund, designated as the State Conservation Fund, and shall be used exclusively for carrying out the provisions of this Act as the State Board of Conservation may direct. The said funds shall be paid out upon warrant of the Comptroller as other funds in the State Treasury are disbursed."

"Section 6. All appropriations made for the biennium beginning July 1st, 1933, for the several departments, commissions, offices, agencies and employees mentioned in Section 3 of this Act, shall be transferred to the State Conservation Fund to be used, as far as necessary, for carrying out the provisions of law in relation to the work and duties mentioned in Section 2 of this Act."

For appropriations for the several Departments above mentioned, see Chapter 15858, Acts of 1933, and particularly page 13 of General Laws of 1933.

December 6, 1934.

MEMBER OF LEGISLATURE MAY HOLD POSITION AS EMPLOYEE
IN DEPARTMENT WHICH SUCH MEMBER ASSISTED
IN CREATING*Dear Sir:*

This refers to your favor of December 6th., relative to the above subject, and in reply thereto I would state that Section 5 of Article III of the Constitution of Florida provides that no Senator or member of the House of Representatives (of the Florida Legislature) shall, during the time for which he was elected, be appointed or elected to any civil office

MISCELLANEOUS

under the Constitution of this State, that has been created or the emoluments whereof shall have been increased, during the term for which such member was elected.

A strict literal interpretation of this provision, as distinguished from its spirit, does not prohibit a member of the Legislature, during the time for which he was elected, from holding an employment in a Department created or the emoluments whereof were increased during his term of office, but does prohibit his election or appointment to a civil office under the Constitution of Florida, which was created or the emoluments of which were increased during the term for which he was elected as a member of the Legislature. It is my opinion that the framers of the Constitution meant that the members of the Senate and House of Representatives should not hold positions with the State which were lucrative, but strictly speaking, I do not believe the appointment of the party named to the position of District Commisisoner would violate this Section of the Constitution, for the reason that, considering the whole of the Conservation Act, I am of the opinion, that all of the persons who may be appointed or employed, other than the Supervisor of Conservation, are in the nature of employees. There are no requirements in the law that they take oath of office. There is no definite tenure of office. There is no requirement for a bond and, therefore, I take it, that in truth and in fact, they are all mere employees, and as employees solely, I do not believe it would be a violation of the letter of the Constitution for you to employ Dr. Kennedy.

December 19, 1933.

AGENTS HAVE NO AUTHORITY TO ENFORCE
TRAFFIC REGULATIONS

Dear Sir:

I am in receipt of your letter of the 18th inst., in which you make inquiry if the conservation agents of the Conservation Department have authority to enforce traffic regulations and if not how they may secure such authority.

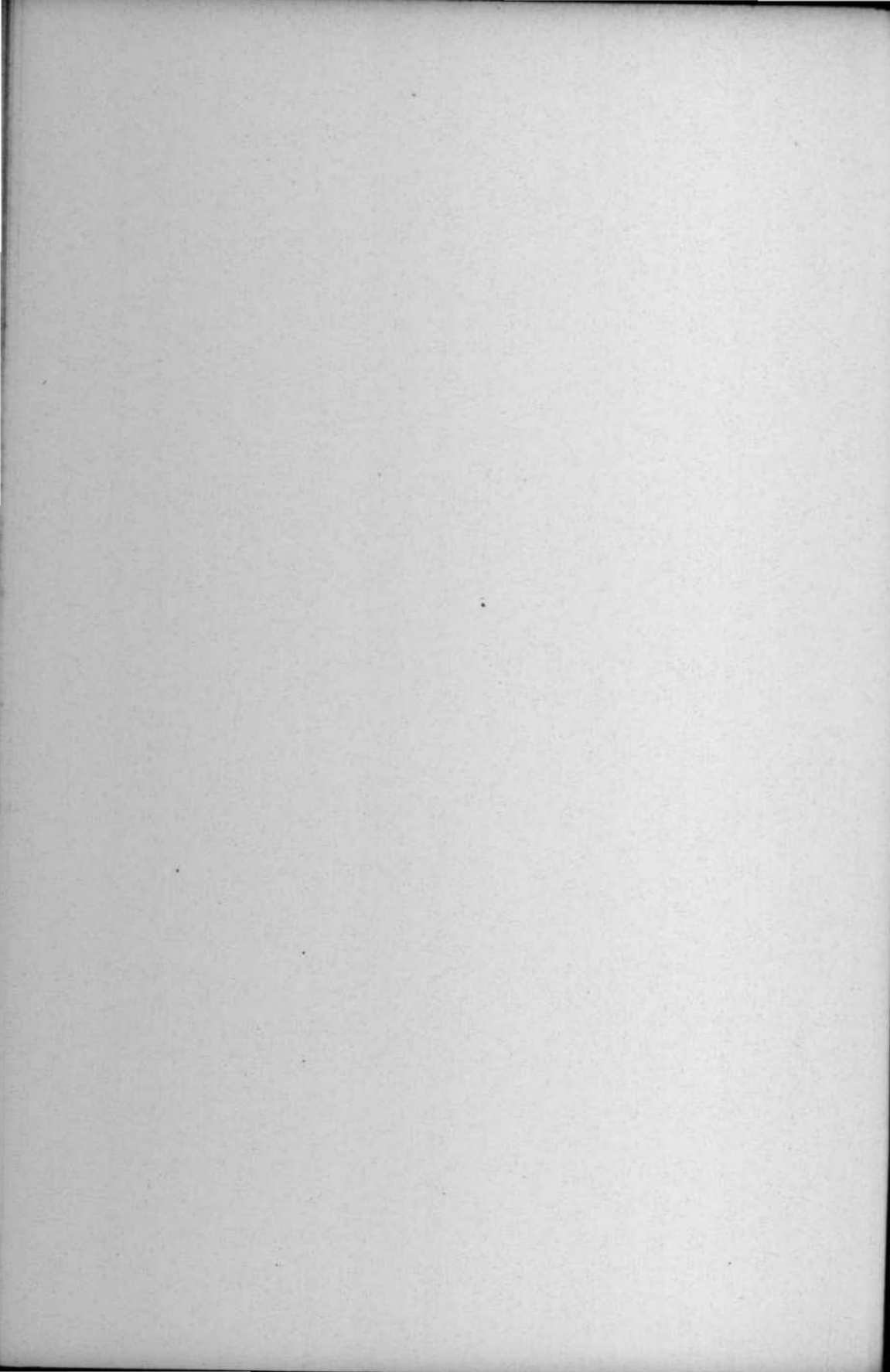
In reply I beg to call your attention to Section 5 of the Conservation Act, Chapter 16178, Laws of Florida, Acts of 1933, which provides that the State Conservation Fund shall be used exclusively for carrying out the provisions of said Act.

The said Act does not relate to enforcement of traffic regulations, and in my opinion the conservation agents have no authority, and can not be authorized, to perform such services.

CHAPTER XII

COURTS

	Page
Section 1. Indictments and Information	511
Section 2. Circuit Judges	515
Section 3. State Attorney	518
Section 4. Probate Act of 1933	521
Section 5. Miscellaneous	523



SECTION I

INDICTMENTS AND INFORMATION

December 8, 1934.

INFORMATIONS CAN NOT BE FILED AGAINST PERSONS FOR
CRIMES COMMITTED PRIOR TO MIDNIGHT OF
DECEMBER 31, 1934

Dear Sir:

I am in receipt of your letter of the 3rd instant, relative to Section 10 of the Declaration of Rights of the State Constitution, as amended in the General Election on November 6, 1934, providing for information to be filed in certain cases instead of presentment or indictment by a Grand Jury. You make inquiry if after January 1, 1935, informations may be filed against defendants for acts committed between November 6, 1934, the date of the adoption of said Amendment, and January 1, 1935. Your inquiry is probably based on the provision of the amendment that the same shall take effect at midnight on December 31, 1934.

In reply your attention is called to Article III, Section 32 of the State Constitution which provides that the repeal or amendment of any criminal statute shall not effect prosecution or punishment of any crime committed before such repeal or amendment. Your attention is further called to 6 R. C. L. 16, Constitutional Law 2, in which we find the following words:

"In some respects a constitutional provision is a higher form of statutory law."

Your attention is further called to Article III, Section 10, United States Constitution, which provides that no State shall pass any *ex post facto* law. Your attention is further called to the case of *Watson vs. Mercer*, 8 Pet. 110, 8 L. Ed. 876, in which it is expressly stated in the headnote that the clause *ex post facto* laws is applicable to penal and criminal laws.

Your attention is further called to headnotes 3 and 4 in the case of *Kring vs. Mo.*, 107 U. S. 232, 27 L. Ed. 506, reading as follows:

3. "The distinction between retrospective laws, which affect the remedy or the mode of procedure, and those which operate directly on the offense, held to be unsound where, in the latter case, they affect to his serious disadvantage any substantial right which the party charged with crime had under the law as it stood when the offense was committed.

4. "Any law is an *ex post facto* law, within the meaning of the Constitution, passed after the Commission of a crime

INDICTMENTS AND INFORMATION

charged against a defendant, which, in relation to that offense or its consequences, alters the situation of the party to his disadvantage; and no one can be criminally punished in this country, except according to a law prescribed for his government by the sovereign authority before the imputed offense was committed, and which existed as a law at the time."

Your attention is further called to headnote 6 in the case of Thompson vs. State of Utah, 170 U. S. 343, 42 L. Ed. 1061, reading as follows:

"The provision in the Constitution of Utah providing for the trial in courts of general jurisdiction of criminal cases, not capital, by a jury composed of eight persons, is *ex post facto* in its application to felonies committed before the territory became a state."

In consideration of the foregoing, I do not think informations may be filed against defendants for acts committed prior to midnight of December 31, 1934, the date on which the recent amendment of Section 10 of the Declaration of Rights of the State Constitution becomes effective.

December 21, 1934.

AMENDED SECTION 10, DECLARATION OF RIGHTS, STATE CON-
STITUTION, RELATING TO INDICTMENTS AND
INFORMATION; COSTS OF WITNESSES

Dear Sir:

I am in receipt of your letter of the 17th instant, relative to Section 10 of the Declaration of Rights of the State Constitution, as amended in the General Election on November 6, 1934, providing for information to be filed in certain cases in lieu of presentment or indictment by a Grand Jury.

Your first inquiry is with reference to your authority as State Attorney to file informations under said amendment in cases where the offense is committed before the effective date of said amendment at midnight on December 31, 1934.

Your second inquiry has to do with the cost of bringing witnesses before the State Attorney for the purpose of inquiring into the commission of offenses upon which an information may be filed.

Answering your first inquiry I beg to say in my opinion amended Section 10 of the Declaration of Rights of the State Constitution does not authorize State Attorneys to file information in cases where the offenses are committed prior to December 31, 1934, the effective date of said amendment. I am enclosing herewith communication from this office to Hon. _____, State Attorney, Ocala, Florida, expressing the same conclusion, as above, but giving a more extended discussion of the question. (See next opinion.)

INDICTMENTS AND INFORMATION

Answering your second question with reference to the cost of bringing witnesses before the State Attorney for the purpose of inquiring into the commission of offenses upon which information may be filed, I beg to say that I find no statute specifically providing for the payment of the Sheriff's fees for service of such summons or for the payment of witnesses appearing in response thereto.

However, under the provisions of Section 4741, Compiled General Laws of Florida, 1927, the State Attorney is allowed the process of his Court to summon witnesses to appear before him, in or out of term time, at such convenient places in the County where such witnesses reside and at such time as may be designated in the summons to testify before him as to any violation of the criminal laws upon which they may be interrogated. This statute is direct authority for the State Attorney to summons witnesses before him for investigation of criminal matters and I think that said amendment to the State Constitution also contemplates the necessary investigation by the State Attorney to enable him to determine whether informations will or will not be filed in certain cases. Under this view, authority for the payment of such costs would seem to be implied.

It appears to me that since the State Attorney is, by said amendment, substituted in certain cases for the Grand Jury, the fees of witnesses summoned before him should be paid as fees to witnesses before the Grand Jury heretofore have been and are now paid under the provisions of Sections 4479 to 4485, Compiled General Laws of Florida, 1927, and that the fees of the Sheriff for serving summonses in such cases should be paid as his fees have been paid heretofore for service of summonses for witnesses to appear before the Grand Jury. In other word, since the State Attorney is substituted for the Grand Jury in certain cases, costs pertaining to witnesses called by summonses before him for the purpose of performing his duties under said amendment should be paid as such costs have heretofore been and are now paid for witnesses before the Grand Jury.

December 21, 1934.

AMENDED SECTION 10, DECLARATION OF RIGHTS, STATE
CONSTITUTION

Dear Sir:

I am in receipt of your letter of the 20th inst., relative to amended Section 10 of the Declaration of Rights of the State Constitution.

In reply to your inquiry, I beg to advise that I agree with you that said amendment becomes effective on December 31, 1934, without the necessity of legislation.

Answering your inquiry as to whether the amendment changes the present powers, duties and procedure of the County Judges and Justices

INDICTMENTS AND INFORMATION

of the Peace sitting as committing magistrates, I beg to say I have examined Sections 8318, 8333 and 8341, Compiled General Laws of Florida, 1927, as well as other Sections and from such examination as I have been able to make it does not appear that said amendment changes the procedure of the County Judges and Justices of the Peace sitting as committing magistrates.

You call attention to Section 4741, Compiled General Laws of Florida, 1927, with reference to the State Attorney administering the oath to witnesses who appear before him and you make inquiry if in view of said statute and the decision of our Supreme Court in the case of Campbell vs. State, 92 Fla. 775, 109 So. 809, the State Attorney can administer an oath to a witness who has not been duly summoned by a Sheriff to testify, also if the State Attorney can administer an oath to a witness appearing before him who has been summoned from a County other than that in which a witness resides. It does not appear under said statute and said opinion of the Supreme Court that the State Attorney is authorized to administer oaths in the situations mentioned.

SECTION 2

CIRCUIT JUDGES

July 19, 1933

ON APPOINTMENT OF—COMMISSION SHOULD ISSUE FOR FULL
TERM*Dear Sir:*

I have your letter of the 17th inst., advising that on June 2, 1933, the Governor appointed the "Judge of the Circuit Court of the 11th Judicial Circuit, State of Florida, until the next Senate." You state that the appointment was sent to the Senate still in session and that the appointment was confirmed by the Senate on the above date. You ask if the commission of said Judge should read for six years from July 7, 1933, that being the date of the expiration of his former term.

In reply I beg to say that in my opinion, under Section 8 of Article V of the State Constitution and Section 464, Compiled General Laws of Florida, 1927, and the decision of our Supreme Court in the case of State ex rel. Davis vs. Collins, 101 Fla. 371, 134 So. 595, such commission should be for the six year term.

November 20, 1933

PROCEDURE IN CASE OF ABSENCE FROM CIRCUIT OR SICKNESS
OR OTHER INABILITY TO HEAR CASES*Dear Sir:*

At your request, I beg to advise that when any circuit judge shall be unable by reason of absence from his circuit or sickness to discharge any duty whatsoever appertaining to his office, which may be required to be performed in vacation or between terms, such matter may be presented to and it shall be the duty of the Judge of another circuit to perform such duties and hear and determine all matters submitted to them, which may be done either in the circuit in which the same is pending or in the resident circuit of the Judge to whom the matter is presented.

In other words, the provisions of Section 4348, Compiled General Laws of Florida 1927, relating to the inability of the Circuit Judge to hear and determine a cause by reason of absence or sickness, were not superseded by Chapter 16053, Laws of Florida, Acts of 1933. It is only when a Judge is disqualified that another Judge is required to be designated to hear the cause, under the provisions of said Chapter 15053.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CIRCUIT JUDGES

August 15, 1934

ASSIGNMENT OF CIRCUIT JUDGES IN CASE OF VACANCIES BY
GOVERNOR LAWFUL

Dear Sir:

Answering your letter of the 8th instant, with reference to assignment of Judges to a Circuit in case of a vacancy, I refer you to Section 8 of Article V of the State Constitution, which provides, among other things:

"The Governor may, in his discretion order a temporary exchange of Circuits by the respective Judges, or order any Judge to hold one or more terms or part or parts of any term in any other Circuit than that to which he is assigned."

I do not find any opinion from this office contrary to the above.

October 25, 1934.

SALARIES, UNDER AN ALLEGED UNCONSTITUTIONAL ACT MAY BE
WITHHELD BY COMPTROLLER

Dear Sir:

I am in receipt of your letter of the 19th inst., relative to Senate Bill No. 517 of the 1921 Legislature, relative to salaries of Circuit Judges in Duval County, which was vetoed by the Governor on June 14, 1921, after final adjournment of the Legislature at 12 o'clock noon on June 3.

I note your reference to the case of *Croissant v. DeSoto Improvement District*, 87 Fla. 530, 101 So. 37, and agree with you in your views that, under the ruling of the Supreme Court in that case, the Governor's veto of S. B. 517 was ineffective and said bill became a law notwithstanding the veto of same. However, I feel sure that Senate Bill 517 is unconstitutional as being in conflict with Sections 42 and 43 of Article V of the State Constitution.

I note your reference also to the case of *State ex rel. A. C. L. Ry. Co. vs. State Board of Equalizers*, 84 Fla. 592, 94 So. 681, holding that the right to declare an act unconstitutional is purely a judicial power, and can not be exercised by the officers of the Executive Department. I have also read numerous subsequent cases citing that decision, and the Supreme Court appears to adhere thereto, particularly in mandamus proceedings. However, in the case of *State ex rel. Davis v. Love*, 126 So. 374, the Court held when an agency or department of the State is sued, it may, by appropriate pleading filed in Court, question the constitutional validity of the statutory provision under which the suit was filed, without conflicting with the above rule. And in the case of *Coppedge, et al. v. State ex rel. Bowden*, 127 So. 319, Judge Whitfield in the body of the opinion

CIRCUIT JUDGES

used this language: "If the statute authorizing the commissions to be paid is unconstitutional, the Courts will not by mandamus require a compliance with the statute."

I am quite positive, however, that the Comptroller, has no intention of approving payments not authorized by the State Constitution, and it seems that, if anything is done by virtue of Senate Bill 517, legal action will have to be brought to accomplish same.

SECTION 3

STATE ATTORNEY

February 9, 1933.

AUTHORITY OF GOVERNOR TO REMOVE FOR INCOMPETENCY

Dear Sir:

By authority of Section 15 of Article IV of the Constitution, the Governor may remove a State Attorney for malfeasance, misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency.

Incompetency as a cause of suspension has never been defined by the Supreme Court of this State. The nearest approach thereto was in an advisory opinion to the Governor, in which the Court stated that physical disability of a circuit judge to perform the duties of his office is not cause for declaring such office vacant, and authorizing the appointment of a successor. It must be kept in mind, however, that circuit judges are not subject to suspension by the Governor or removal by the Senate, whereas State Attorneys are.

It appears that the word "incompetency" as used in a Texas statute of 1895, relating to the removal of officers, has been construed to mean where an officer has been found to be incompetent by reason of some serious physical or mental defect not existing at the time of his election, which has rendered him unfit or unable to discharge promptly and properly the duties of his office.

It is just possible that the Supreme Court would hold the word "incompetency" as used in Section 15 of Article IV of the Constitution to mean that physical or mental condition which renders an officer incapable of performing the duties of his office.

February 23, 1933.

ELIGIBLE TO HOLD OFFICE OF COUNTY SOLICITOR

Dear Sir:

Replying to your favor of the 20th instant, requesting my opinion as to whether the State Attorney in a circuit comprised of one county where-in there is a criminal court of record, could, without a constitutional amendment, act as State Attorney for the Circuit and at the same time as county solicitor of the criminal court of record, permit me to say:

Section 31 of Article V of the Constitution of the State of Florida provides that "the State Attorney residing in the county where a criminal court of record is held shall be eligible for appointment as county solicitor

STATE ATTORNEY

for said county." In view of this provision, it is my opinion that all that would be necessary to make it possible for a state attorney of the Tenth Judicial Circuit to function both as state attorney and as prosecutor for the criminal court of record, would be to have the Governor appoint the State Attorney of the Tenth Judicial Circuit as solicitor for the criminal court of record in and for Polk County.

Of course, this could probably not be done until the expiration of the term of the present solicitor, unless the Court should be abolished and re-created.

I do not know of an instance where a state attorney has served as county solicitor of a criminal court, but the constitutional provision undoubtedly makes it possible for him to hold the office of state attorney and of county solicitor at one and the same time.

August 16, 1934.

DUTIES AFTER REMOVAL OF CAUSE AGAINST FEDERAL OFFICERS
FROM STATE COURT TO FEDERAL COURT

Dear Sir:

This is in response to yours of the 15th instant.

Under Section 33 of the Judicial Code, the same being Section 76, Title 28, U. S. C. A., it seems that the removal of this cause to the United States District Court was proper. See the construction of this section in *State vs. Maryland vs. Soper*, 270 U. S. 9, 70 L. Ed. 449, 46 S. Ct. 185.

While I am unable to find that the Supreme Court of the United States has passed upon your duties as State Attorney in a matter of this kind, it appears that the lower Federal Courts have held that when a cause is removed under this Section of the Judicial Code, it effects merely a change of tribunal and not a change of prosecuting officers, and that you must continue to prosecute the cause as a representative of the State, and the United States Attorney should represent the defendants. See the following cases:

Delaware vs. Emerson, 8 Fed. 411 (1881).

Carter vs. State, 18 Fed. (2d) 850, (C. C. A. Sixth Circuit).

Miller vs. Kentucky, 40 Fed. (2d) 820 (C. C. A. Sixth Circuit).

I also call your attention to Section 485 of Title 28, U. S. C. A., making it the duty of the District Attorney to appear in behalf of the defendants in suits or proceedings pending in his District against officers of the revenue, etc.

I therefore am of the opinion that it is your duty as State Attorney to prosecute this cause.

August 22, 1934.

ENTITLED TO EXPENSES WHEN DIRECTED BY GOVERNOR TO GO
TO SOME OTHER CIRCUIT

Dear Sir:

I am in receipt of your letter of the 20th instant acknowledging my letter of the 16th instant, with reference to the prosecution of the cases of State vs. J. N. Gay and State vs. J. S. Camp in the Federal Court. You make inquiry if you are entitled to expenses from the State for conducting these prosecutions.

In reply your attention is called to Sections 4744 and 4745, Compiled General Laws of Florida, 1927. In my opinion if you will secure a letter from the Governor directing you to proceed to Jacksonville to assist the local State Attorney in the prosecution of the two above mentioned cases in the Federal Court, you will be entitled to payment of your expenses for same.

September 22, 1934.

DUTY OF STATE ATTORNEY TO INVESTIGATE TRESPASSING ON
STATE LANDS AND THE REMOVAL OF TIMBER AND THE
WORKING OF TIMBER FOR TURPENTINE PURPOSES
ON LANDS SOLD TO THE STATE FOR
NON-PAYMENT OF TAXES

Dear Sir:

I have your letter in which you request my opinion as to whether or not it is your "duty as State Attorney to investigate the disposition of timber from lands owned by the State, or upon lands upon which the State holds tax certificates in this County."

In your letter you state that there is a Criminal Court of Record in your County.

Section 28 of Article V of the Constitution of Florida states that prosecutions in the Criminal Court of Record shall be upon information filed by the Prosecuting Attorney, but that the Grand Jury of the Circuit Court may indict for offenses triable in the Criminal Court and that upon the finding of an indictment the Circuit Judge shall commit or bail the accused for trial in the Criminal Court, which trial shall be upon information. The Grand Jury in your County is charged with the duty of investigating all offenses committed therein, and you as State Attorney are charged with assisting the Grand Jury wherever they request you to do so.

It is my opinion that it is your duty as State Attorney to investigate and bring to the attention of the Grand Jury, any trespassing on State lands and the cuttings of timber or the removing or working for turpentine of timber on land sold to the State for taxes. See Sections 7392, 7397, 7398 and 7399, Compiled General Laws of Florida, 1927.

SECTION 4

PROBATE ACT OF 1933

March 26, 1934.

NECESSARY FOR GUARDIAN TO ADVERTISE BEFORE MAKING
TURPENTINE LEASE*Dear Sir:*

I am in receipt of your letter of the 24th inst., relative to the Probate Act, Chapter 16103 of 1933, and making inquiry if it is necessary for the guardian to first advertise lands when making turpentine leases.

Your attention is called to Sections 130 and 132 of the Probate Act relating to notice and to order of sale of real property. Your attention is also directed to Section 142 of said Act which provides that the proceedings in making leases shall be the same, as nearly as may be, as in cases of application for the sale of property "except that notice shall be given to all persons interested in the estate."

Unless the time for filing claims has expired and all interested parties are known, and acceptance of notice can be had from them, it would appear that advertisement of notice would be necessary before making turpentine leases under said Act.

April 11, 1934.

1923 LAW REPEALED BY 1933 ACTS

Dear Sir:

This is in response to your communication of April 6, 1934, wherein you ask for my opinion as to whether or not Section 198 of Article 6 of Chapter 16103, Acts of 1933 (known as the 1933 Probate Act) repealed Chapter 9283, Acts of 1923, which amended Section 3724, Revised General Statutes of 1920.

You will note that said Section 198 of the 1933 Probate Act specifically repealed Sections 3695 to 3786, both inclusive, of the Revised General Statutes of 1920. Chapter 9283, Acts of 1923, amended the said Section of the Revised General Statutes by enlarging and extending its provisions.

It is my opinion that by the specific repeal of Section 3724 of the Revised General Statutes, the amending Act of 1923 was likewise repealed. This opinion is based upon two well-known rules of law:

(1) That a repeal of a statute which has been amended operates on and carries with it the amendment, and particularly is this true where the amendment merely enlarges and extends the provisions. See 59 C. J. page 938; *Duke vs. American Casualty Company*, 226 Pac. (Wash) 501, 504, and cases cited therein.

PROBATE ACT OF 1933

State vs. Schenk, 238 Mo. 429, 142 S. W. 263.

(2) Also, that the enactment of a complete revision operates to repeal former statutes dealing with the same subject, even though the former statute be neither expressly repealed nor impliedly repealed because of repugnancy. See annual report of Probate Committee contained in February, 1934 Issue, Florida State Bar Journal, page 207, and cases cited.

April 16, 1934.

PROVISIONS FOR FILING CLAIMS ARE MANDATORY

Dear Sir:

I am in receipt of your letter of the 14th inst., with reference to Section 120 of Chapter 16103, Laws of Florida, Acts of 1933, reading as follows:

"Section 120. *Form and Manner of Presenting Claims—Limitation.*—No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the County Judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled."

You make inquiry if the provisions of said Section for the filing of claims are mandatory. In my opinion such provisions are mandatory. Your attention, however, is called to Section 121, providing for amendment of claims when a bona fide attempt is made to file a claim and same is defective as to form.

SECTION 5

MISCELLANEOUS

August 10, 1933

UNITED STATES COURTS—CLERKS STATE CIRCUIT COURTS UPON
PRESENTATION REQUIRED TO RECORD JUDGMENTS
AND DECREES OF*Dear Sir:*

Replying to yours of August 7th, permit me to say while Chapter 14749, Laws of Florida, Acts of 1931, requires the Clerk of the Circuit Court to enter in his record of foreign judgments certified transcripts of the judgments and decrees of the United States Courts held in the State of Florida, which may be presented to him for that purpose, it does not appear to require the Clerk of the Circuit Court to enter and record judgments of the United States Courts other than those held in the State of Florida.

However, I do not know of a statute expressly prohibiting a Clerk of the Circuit Court from entering and recording in his record of foreign judgments certified transcripts of the judgments and decrees of the United States Courts held outside of this State. I am, therefore, inclined to the view that you may record in your record of foreign judgments an order of the District Court of the United States for the Eastern District of Virginia, adjudging Allan Randolph Hoffman, individually and trading as Hoffman Motor Company, a bankrupt.

July 14, 1934

FEDERAL JUDGMENTS RENDERED IN THIS STATE PRIOR TO 1931
ONLY BECOME LIENS ON PROPERTY IN COUNTY OTHER
THAN IN THE ONE IN WHICH JUDGMENT WAS
RENDERED, UPON RECORDING WITH
CLERK OF THE CIRCUIT COURT*Dear Sir:*

I am in receipt of your letter of the 26th ult., stating that a judgment was taken in favor of the United States against a citizen of Florida in the United States District Court in Jacksonville prior to the passage of Chapter 14749, Laws of Florida, Acts of 1931, authorizing the recording of the judgment of the United States Court by the Clerk of the Circuit Court in each County of the State. You make inquiry if such a judgment constitutes a lien on property in Manatee County without having been transcribed or recorded in Manatee County.

MISCELLANEOUS

In reply your attention is called to 28 U. S. Code, Annotated, Section 812, reading as follows:

"Judgments and decrees rendered in a district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State. Whenever the laws of any State require a judgment or decree of a State Court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this section and section 813 of this chapter shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State."

Your attention is further called to Sections 4488 and 4489, Compiled General Laws of Florida, 1927. Section 4489 readh as follows:

"Such judgments and decrees shall create a lien upon the real estate of the defendant situated in any other county than the one in which the same shall have been rendered, when a certified transcript of the said judgment or decree shall have been recorded in the county in which the real estate so sought to be bound may be situated."

Your attention is further called to Section 4492 of said compilation which was in force until repealed by Chapter 14749, Acts of 1931. Section 4492 reads as follows:

"Judgments and decrees recovered in the Federal courts in the State of Florida shall only create liens against the real estate of the defendant when certified copy of such judgment or decree is recorded in the foreign judgment docket of the county wherein the real estate of the defendant is situated and sought to be bound by such judgment or decree."

Under the above quoted Federal and State statutes, I beg to say in my opinion a judgment in favor of the United States secured in the United States District Court in Jacksonville, prior to the repeal of Section 4492, Compiled General Laws of Florida, did not constitute a lien on real estate in Manatee County when the record of such judgment was not recorded in Manatee County.

As to the application of State statutes of limitation in regard to liens of judgments secured in Federal Courts, I quote you from 28 U. S. Code, Annotated, Section 814, as follows:

MISCELLANEOUS

"Judgments and decrees rendered in a district court, within any State, shall cease to be liens on real estate or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such State cease, by law to be liens thereon.

August 4, 1934

JUVENILE JURISDICTION DOES NOT DEPEND ON CITIZENSHIP—
SAID COURTS DO NOT HAVE JURISDICTION
OF CRIMINAL OFFENSES

Dear Sir:

I am in receipt of your letter of the 26th ult., making inquiry as to your duties as Juvenile Court Judge in three separate cases described in your letter.

The main point involved in the first two cases described by you is the question of residence. Jurisdiction of the Courts, including the Juvenile Court, does not require citizenship. When children are in this State and are dependent and delinquent they are subject to the jurisdiction of the Courts and subject to be committed to the State Institutions when deemed necessary by the Court.

Your third question has reference to your jurisdiction over criminal cases. Regarding same I beg to say the statutes relating to delinquent and dependent children do not contemplate that Juvenile Courts should try criminal offenses and such Courts have no authority to try and adjudge criminal cases. Where the facts in a case constitute a criminal offense I do not think Probation Officers should file petitions in your Court. If, however, such petition is filed and the evidence shows a criminal act, it is my view that a Juvenile Court should remand the child to the proper Criminal Court.

August, 15, 1934

MILEAGE TO BE PAID TO JURORS TO AND FROM COURT

Dear Sir:

This refers to your favor of August 14th, with which you enclose a letter from the Clerk of the Circuit Court, Duval County, relative to mileage to be paid jurors in circuit court.

Sections 4473 and 4474 of the Compiled General Laws, pertaining to mileage to be paid jurors contains the following provision, to-wit:

MISCELLANEOUS

"All jurors shall receive five cents per mile for every mile necessarily traveled in going and returning from Court by the nearest practicable route."

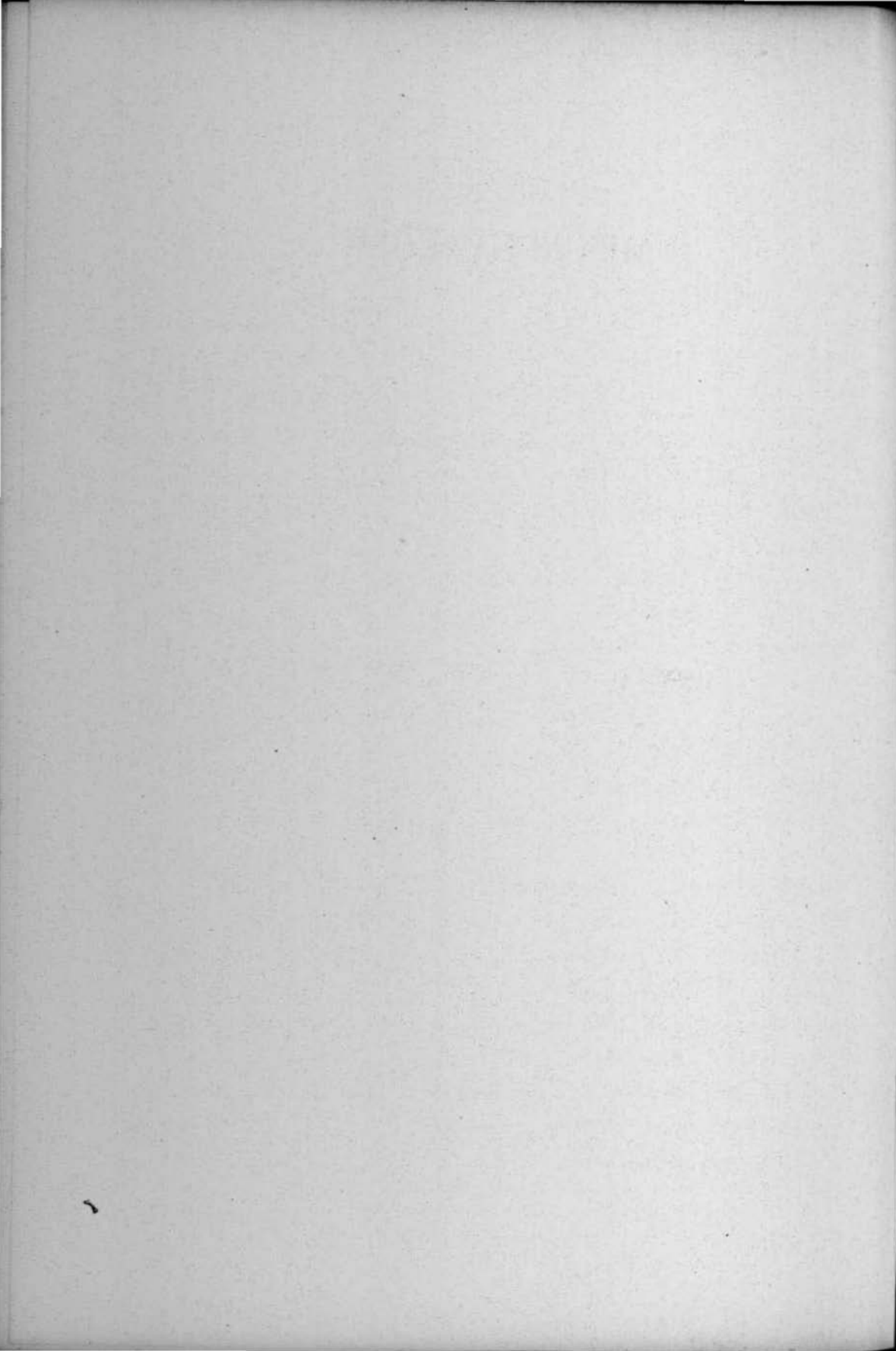
I do not find that the Supreme Court has ever construed the provision quoted.

It is my opinion, that the provision quoted relative to mileage to be paid jurors should be construed to mean that the juror should be allowed mileage at the rate of five cents per mile necessarily traveled in going to and returning from Court by the nearest practicable route from his permanent or temporary place of abode.

CHAPTER XIII

MISCELLANEOUS

	Page
Section 1. Building and Loan Associations	529
Section 2. Cities and Towns	536
Section 3. Citizens and Citizenship	540
Section 4. Convicts	546
Section 5. Corporations	551
Section 6. Holidays	557
Section 7. Inspection Laws	559
Section 8. Motor Vehicles	565
Section 9. National Guard	570
Section 10. Nepotism	571
Section 11. Newspapers	581
Section 12. Notary Publics	582
Section 13. Pensions	585
Section 14. Public Records	588
Section 15. Securities Act (Blue Sky)	590
Section 16. Slot Machines	597
Section 17. Small Loan Law	598
Section 18. State Auditors	601
Section 19. State Land	603
Section 20. State Officers and Employees	610
Section 21. State Road Department	615
Section 22. Miscellaneous	624



SECTION 1

BUILDING AND LOAN ASSOCIATIONS

December 29, 1933.

IN CASE OF INSOLVENCY, PAYMENTS SHOULD BE MADE
PRO-RATA AMONG STOCKHOLDERS*Dear Sir:*

In your letter you state that for several years prior to 1931, when a building and loan association felt that its stock was worth less than par, to insure that withdrawing members did not receive more of the assets than they were entitled to, a withdrawal value was placed on the stock, and the residue was held pending the final liquidation of the association.

I agree with your interpretation of Chapter 15605, Acts of 1931, and subsequent acts, that the purpose of the Legislature was that in case of insolvency, payments should be made pro-rata to the stockholders, and where withdrawal payments had been made to some, that the remaining stockholders should have an amount equal to that paid to the demanding stockholders, before payment to such demanding stockholders is resumed.

In other words, the payments should be equalized as contemplated by the Act of 1931 and subsequent acts.

December 29, 1933.

IT IS MANDATORY ON BUILDING AND LOAN ASSOCIATIONS, IN
CASES WHERE THE CAPITAL IS IMPAIRED TO THE EXTENT
OF 30%, TO MAKE QUARTERLY DISTRIBUTION TO ALL
STOCKHOLDERS OF THE NET CASH RECEIVED BY IT
ON A PRO-RATA BASIS*Dear Sir:*

I think sub-section 4th of Section 1 of Chapter 15908 should be read and construed in connection with Section 9 of the Act. So construed, it is mandatory on building and loan associations, in cases where the capital is impaired to the extent of 30%, to make quarterly distribution to all stockholders of the net cash received by it on a pro-rata basis, until the association is finally liquidated, or the losses are adjusted, or the earnings restore the stock to par.

When the losses resulting from the depreciation in the value of the assets or otherwise, reduce the value of the association's assets up to

530 BIENNIAL REPORT OF THE ATTORNEY GENERAL
BUILDING AND LOAN ASSOCIATIONS

30%, then it is optional with the directors with the consent of the Comptroller, to apply to the Circuit Court by petition for a reduction of its liability to its stockholders, in such a manner as to distribute the loss on a pro-rata basis among the stockholders. But, when the losses reduce the value of the assets so that they are worth less than 70% of the association's obligations to its creditors and stockholders, then it is mandatorily required of the directors that they apply by petition to the Circuit Court for a reduction of the association's liability to its stockholders on a pro-rata basis.

After an adjustment of the losses by a reduction of the association's liability as in said Act provided, the Association would then be presumed in law to be solvent, and pro-rata payments would cease, and the payment of withdrawals in the order made would be resumed.

December 29, 1933.

MAY ACCEPT OWN STOCK IN PAYMENT OF MORTGAGE
IN CERTAIN CASES

Dear Sir:

It is my opinion that before a building and loan association may accept its own stock in payment of a mortgage, at least one of the conditions imposed by Section 5 of Chapter 15908 must exist, that is to say:

- (a) The mortgage loan in the opinion of the board of directors must be uncollectible, or
- (b) The value of the security less than the amount of the loan, or
- (c) The mortgage debt must be in default for a period of thirty days.

January 10, 1934.

PURCHASE OF STOCK IN FEDERAL SAVINGS AND LOAN
ASSOCIATIONS AND PAYMENT WITH MORTGAGES
HELD BY IT, LAWFUL

Dear Sir:

This acknowledges receipt of your communication of the 10th instant, in which you ask whether or not under Chapter 15908, Acts of 1933, a building and loan association organized under the laws of Florida may assign or transfer mortgages or other evidences of indebtedness held by it, regardless of whether or not such evidence of indebtedness has been taken by the said association for any loan made by it to its members, to a Federal savings and loan association, in return for or in payment of stock subscribed for by the State association in the Federal association.

It is my understanding that these Federal savings and loan associations involved in transactions of this sort are authorized, among

BUILDING AND LOAN ASSOCIATIONS

other powers they may have, to lend money to building and loan associations.

Under paragraph Sixth of Section 3 of said Chapter 15908, Acts of 1933, specific authority, with the approval of the State Comptroller, is given a Florida building and loan association to subscribe and pay for shares of stock in any Federal corporation authorized by the laws of the United States or the State of Florida to lend money to building and loan associations and to pay for such stock from any *funds* which the association may have on hand.

By sub-paragraph Seventh of said Section 3, the provisions of the said Act of 1933 (sub-paragraph 3rd of Section 6), prohibiting the assignment or transfer of evidences of indebtedness or mortgages securing the same, taken by any building and loan association for the payment of any loan, are made inapplicable to the investments permitted under said Section 3, one of which is the investing in stock of such Federal corporation.

It is my opinion that when the Act authorizes the payment from any *funds* on hand, it was the intent of the Legislature not to restrict the payment by money or cash alone, but that the intent was to imply a broader basis for such payment by using the word "*funds*" in the sense of not only cash or money, but any other assets of the corporation or association. Such construction is not only permissible under decisions of our Supreme Court and other courts, but it is obviously the interpretation to be placed upon this provision of the Act of 1933, in the light of the obvious intent of the Legislature that it be liberally construed for the purpose of permitting building and loan associations organized under Florida law to secure the maximum amount of relief and assistance from the Federal Government.

It is, therefore, my opinion that the proposed transaction is in accordance with the provisions of the said Act of 1933, provided the same is given your approval pursuant to said sub-paragraph Sixth of Section 3.

May 8, 1934.

NOT NECESSARY FOR STOCKHOLDERS TO RATIFY PURCHASE OF
STOCK IN FEDERAL AGENCY

Dear Sir:

This is in response to your communication of April 26th, wherein you ask whether or not mortgages purchased by idle funds under paraloan associations under the sixth paragraph of Section 3 of Chapter 15908, Acts of 1933, with reference to subscribing and paying for the shares of stock in certain federal agencies, it is necessary for there to be any action by the stockholders.

It is my opinion that such power is to be exercised in the same manner as other powers are exercised, and that, there being no require-

532 BIENNIAL REPORT OF THE ATTORNEY GENERAL
 BUILDING AND LOAN ASSOCIATIONS

ment that the same be subject to any action by stockholders, such action by stockholders is not necessary.

Of course, there is the limitation with reference to approval by the State Comptroller.

May 10, 1934.

MORTGAGES PURCHASED WITH IDLE FUNDS ARE ASSIGNABLE

Dear Sir:

This is in response to your communication of April 26, 1934, wherein you ask whether or not mortgages purchased by idle funds under paragraph Fifth of Section 3 of Chapter 15908 are assignable, or whether paragraph Third of Section 6 of the same Act prohibits the same from being assigned.

Paragraph Fifth of Section 3 provides:

"In case there is not sufficient demand for loans on the part of stockholders on real estate mortgages or the stock of the association, which are acceptable to the Board of Directors, any Association shall have the power to purchase first mortgages upon improved real estate, provided the loan secured by the mortgage purchased does not exceed sixty percent of the fair value of the real estate mortgaged, and also to invest in the obligation of the United States, State of Florida and any county or municipality of the State of Florida, as the case may be, and also to purchase the stock or invest in the promissory notes of any other domestic building and loan association doing business in the State of Florida."

Paragraph Seventh of the same Section provides that the provisions of the Act prohibiting the assignment or transfer of evidences of indebtedness or mortgages securing the same taken by any building and loan association for the payment of any loan, shall not apply to the investments permitted by said Section.

Paragraph Third of Section 6 of said Act provides that the evidences of indebtedness taken by a building and loan association for any loan made by it to its members, shall not be negotiable in form, and whatever be its form, the same shall be non-negotiable in law, and that no such debt or evidence shall be assignable or transferrable in any manner, except as otherwise provided in this Act.

It is my opinion that by paragraph Seventh of Section 3, the provisions of paragraph Third of Section 6 are specifically made inoperative as to mortgages purchased out of idle funds, as such mortgages are investments permitted under said paragraph Fifth of Section 3. Such may therefore be transferred or assigned as any other investments permitted under said paragraph.

BUILDING AND LOAN ASSOCIATIONS

July 19, 1934.

INABILITY TO LOCATE STOCKHOLDERS IN LIQUIDATION. PAYMENT SHOULD BE MADE TO STOCKHOLDERS WHOSE ADDRESS IS KNOWN, OTHERS TO BE HELD UNTIL STOCKHOLDER IS LOCATED

Dear Sir:

I am in receipt of your letter of the 2nd instant, enclosing communication from _____, Building and Loan Examiner, with reference to building and loan associations.

Inquiry is made as to the voluntary liquidating of a building and loan association, and distributing the assets to stockholders in cases where a majority of stockholders cannot be located. Further inquiry is made as to distribution by building and loan associations in process of liquidation, when there is cash on hand to make a sizeable distribution to the stockholders, but only a small percentage of them can be reached.

It seems to me under such circumstances that distribution in either of the above events should be made to those stockholders who can be located, with the checks representing the shares of the others to be held and set aside, until such time as by diligent effort they may be located.

The building and loan statutes do not appear to provide for such contingencies, and I suggest that it would be well to secure at the next session of the Legislature an Act providing therefor, similar to the one in regard to banks in liquidation passed by the 1933 Legislature.

July 19, 1934.

IN PROCESS OF VOLUNTARY LIQUIDATION, ASSOCIATION MAY FUNCTION WITH WHATEVER NUMBER OF DIRECTORS REMAIN

Dear Sir:

This is in response to your communication of the 2nd instant, enclosing letter from Mr. _____, with reference to the number of directors for building and loan associations in process of liquidation. By process of liquidation, the communication states, is meant not a liquidation pursuant to the provisions of Chapter 15908, Acts of 1933, but rather a mere voluntary winding up of the affairs of the building and loan association, during which process no new loans are made, and at the end of which time the association as such will cease to function.

By Section 11 of Chapter 10028, Acts of 1925, as amended by Chapter 11865, Acts of 1927, and now appearing as Section 6161, Compiled General Laws of 1927, it is provided that the business of a building and loan association shall be managed by a board of directors of not less than nine members.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
BUILDING AND LOAN ASSOCIATIONS

It is my opinion that under the above mentioned statute, the requirement for nine members has to do with a building and loan association functioning as a going concern, and that when such association is in process of voluntary liquidation as above mentioned, such liquidation procedure may be continued to conclusion by the directors remaining.

September 6, 1934.

NOT FUNCTIONING AS TO NEW LOANS BECAUSE OF UNPAID
WITHDRAWAL DEMANDS, CANNOT MAKE LOANS UNDER
THE NATIONAL HOUSING ACT

Dear Sir:

This is in response to your request for an opinion concerning letter to you under date of September 3, 1934, on the League of Florida Building and Loan Associations.

You ask for my opinion as to whether a building and loan association not functioning as to new loans because of unpaid withdrawal demands, may make loans under the terms of the National Housing Act. (48 Stat. Act of June 27, 1934, Chapter 847—now appearing as Sections 1701, U. S. C. A., July 1934 Cumulative Pamphlet).

By Section 6173 a building and loan association is given power to borrow money for the purposes and within the limitations therein mentioned. By Section 6 of Chapter 15908, Acts of 1933, now appearing as Sections 6183(5), Compiled General Laws 1927, 1934 Supplement, such association with the approval of the State Comptroller is given the power to borrow money from certain Federal agencies, with the right to pledge collateral therefor, and evidences of indebtedness taken by such association for loans to its members, are not negotiable in form except as provided with reference to the power to borrow from such agencies.

The building and loan associations inquired about are those which are not operating pursuant to the provisions of Section 1, Chapter 15908, Acts of 1933, now appearing as Section 6183 (1), Compiled General Laws of 1927, 1934 Supplement, and are those which are in the situation contemplated by the third subdivision of said Section 1, to-wit: those prohibited from making new loans.

The National Housing Act, *supra*, contemplates a loan by the institution to which money is then loaned by the Federal Housing Administration.

It is my opinion that building and loan associations in the condition involved are not authorized to make new loans, even though we liberally construe Section 6 of said Act of 1933 to authorize borrowing from the Federal Housing Administration; and that even if such loan may thereafter be authorized from the Federal Housing Administration, the loan

BUILDING AND LOAN ASSOCIATIONS

to the borrower in the first instance cannot be made because of the prohibition contained in Section 1 of said Act of 1933.

It is with much regret that I must therefore advise you that such building and loan associations found in this condition are without power to use their funds to make such loans. I suggest remedial legislation to take care of this situation.

SECTION 2

CITIES AND TOWNS

January 17, 1933.

CITY NOT LIABLE FOR INJURIES INFLICTED ON COUNTY PRISONERS BY COUNTY AUTHORITIES

Dear Sir:

This refers to your favor of the 12th., instant with reference to the City Commission of Leesburg permitting the County to use the City Jail.

I cannot see myself how the town of Leesburg would be legally liable for any injury that might be done to a prisoner while in the jail by the county authorities. Of course if any injury were to come to the prisoner from the acts of the town authorities, they might be subject to suit or possible liability. For the acts of the county authorities in the use of the jail, I cannot possibly see how the town of Leesburg would be liable. I think as a matter of practical business, counties are using city jails throughout the State, and have been for the past thirty years to my knowledge, and I have never known of any such suit or liability of that character.

February 10, 1933.

GOVERNOR AUTHORIZED TO DIRECT COMPTROLLER TO AUDIT THE FINANCIAL DEPARTMENT

Dear Sir:

This refers to your favor of the 9th., instant enclosing a letter, together with petition requesting the Governor to authorize and direct the Comptroller of the State of Florida to examine into the affairs of the financial department of the City of Eagle Lake. I beg to advise that Section 3089 of the Compiled General Laws of Florida among other things provides:

"The Governor shall have power to authorize and direct the Comptroller by himself, or by some competent person or persons appointed by him, to examine into the affairs of the financial department of any municipality within the State. And it shall be his duty to direct the Comptroller to make such examination whenever petitioned to do so by at least 20% of the tax-paying electors of any municipality. On every such examination inquiry shall be made as to the financial condition and resources of the municipality, and whether the requirements of the constitution and laws have been complied with, and into the methods and accuracy of the municipality's accounts, and as to such other matters as the Governor may prescribe. The Comptroller and

CITIES AND TOWNS

every such examiner appointed by him shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance, attendance and testimony of any such person for the purpose of any such examination, and the production of books and papers."

You will note that this section of the statute authorizes the Governor to direct the Comptroller to examine into the affairs of the financial department of any municipality, and the Governor may do so if and when in his discretion he wishes to act in such matters under such petitions.

August 9, 1933.

COMPTROLLER NOT AUTHORIZED TO REQUIRE REPORTS OF
FINANCIAL AFFAIRS

Dear Sir:

I am in receipt of your letter of the 8th instant, with reference to Section 3089, Compiled General Laws of Florida, 1927, relative to reports to you of the financial affairs of cities and towns. You make inquiry as to how far your authority goes in requiring such reports.

In reply I beg to say that I have carefully read the above statute and it appears there will be nothing amiss in your calling such statute to the attention of the officials of the several cities and towns in the State, but I do not find any authority in said statute, or otherwise, for you to require such reports.

November 23, 1933.

INTERPRETATION OF LAWS GRANTING ADDITIONAL POWERS TO
PENSACOLA AND CONSTRUCTION OF SECTION 10 AND
ARTICLE IX OF THE CONSTITUTION

Dear Sir:

This is in answer to your inquiry as to whether or not in my opinion, Chapter 16621, Laws of Florida, Acts of 1933, being

"AN ACT Relating to the City of Pensacola Granting Additional Powers to Said City, and Further Regulating Its Powers," is in conflict with Section 10 of Article IX of the Constitution of Florida.

Interpreting this Section of the Constitution in the light of its history and the evil intended to be prevented, I find that its purpose was to prevent primarily three evils:

(1) The commingling of public with private funds to advance an enterprise which in its primary nature was private, but from which it was thought incidental public benefits would flow.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CITIES AND TOWNS

(2) The appropriation of public funds to the purchase of stock in a private corporation, whereby the money raised by taxation was used to promote primarily a private enterprise over which the public body had no management or control, or was no more than a joint holder of stock.

(3) The lending of public credit to enterprises primarily private in their nature, and either the use of or a pledge of the taxing power where-with to meet the obligations imposed by such extension of credit.

I find on a careful analysis of the said Act of 1933, that the corporation authorized to be formed is, at least while all the stock therein is owned by the City, a quasi-public, and not a private corporation; that under the Act in question the City can never be a joint stockholder, but must sell all of the stock if it decides to sell any; and that the City cannot in any manner be liable for the debts of the said corporation or lend its credit thereto.

Furthermore, the transactions in which such corporation may engage, with reference to the assets which it owns received from the City, are subject to and conditioned upon the action of the City authorizing the same.

I am therefore of the opinion that the act in question does not violate said Section 10 of Article IX of the Constitution of Florida.

November 27, 1933.

NOT REQUIRED TO POST BOND IN MANDAMUS SUITS
AGAINST ITS OFFICERS

Dear Sir:

This will reply to your letter of November 22nd, in which you ask to be advised whether, where mandamus is brought against municipal officers or officers of a taxing district in their official capacity, the city or taxing district, being the real party in interest, would have the right to post a bond.

Chapter 16245, Acts of 1933, reads as follows:

"No municipal corporation or taxing district organized or created under any law of this State shall be required to furnish any surety upon any injunction, appeal, supersedeas, or other judicial bond required by any law of this State, or order of Court, in any legal proceeding in which it may be a party."

The statute quoted above appears by express provision to make it unnecessary for a municipal corporation or taxing district organized or created under any law of this State to post a bond in legal proceedings such as are mentioned in the statute quoted above.

In the particular case about which you make inquiry, I do not have the pleadings before me, and I am for that reason not in a position to advise you whether or not the city would have the right to post a bond. Questions of this nature should properly be presented to the attorney for your company.

CITIES AND TOWNS

August 6, 1934.

JUDGMENT AGAINST—DOES NOT CREATE LIEN ON PROPERTY OF,
UNTIL LEVY OF EXECUTION*Dear Sir:*

This is in receipt of yours of the 26th instant, regarding the recent decision of the Supreme Court of Florida in the case of City of Sanford vs. Dofnos Corporation, et al, opinion filed July 17, 1934.

It is my opinion that under this decision, it is definitely held that a general judgment against a municipal corporation, creates no lien by the mere rendition of such general judgment; but that in order for such lien to arise, it is necessary that there be an actual levy of execution upon a particular piece or parcel of real estate owned by the municipality and subject to seizure upon execution, pursuant to the rule announced in the said case concerning the liability of such property for such judgments.

SECTION 3

CITIZENS AND CITIZENSHIP

June 26, 1933

LEGAL HOME AND DOMICILE—DEFINITION

Dear Sir:

This refers to your favor of June 24.

Every man and woman must have some place which is their legal home and domicile. This means the permanent place which they call home, the place to which they return when they are away. This is more or less guided by the intention of the parties, for every person has a right to make his permanent home or domicile in any place he chooses.

If Mr. ——— has had his permanent home or domicile in the State of Florida for two years immediately before he seeks employment, then his permanent home and domicile would control and would permit him to accept employment as a school teacher in Florida. Everyone has a home and domicile, whether he exercises his right of suffrage or not. Of course, voting at any one place is strong evidence and conclusive for the time being that that place is his legal home and domicile, but if Mr. ——— has not voted in either Alabama or Florida, then you do not have evidence with reference to his right of suffrage to aid in determining his legal home and domicile. If he actually claims and has claimed and treated Florida as his home for a full two years, then he is entitled to accept employment in this State.

January 8, 1934

LEGAL DOMICILE, PLACE OF PERMANENT HOME

Dear Sir:

This refers to your request as to what, under the law of this State, constitutes a man's legal domicile or residence.

I beg to advise that a man's legal domicile or residence is the place of his permanent home. A person may establish his permanent home and domicile anywhere he chooses, but when he goes to a particular place, that is a county or state, and there makes up his mind that that county or state is going to be his home, and that is the place to which he will return when he goes away, and it is the place where he will vote if he wishes to exercise the right of suffrage, and it is the place he intends for his citizenship to be and remain, then that place is and becomes his legal domicile and residence. It is immaterial that he may have to

leave that place for periods of time in performing his duties in business or otherwise, but if that is the place which he intends to be his permanent home and domicile, and it is the place to which he returns, then it continues to be his legal domicile and residence. In other words, legal domicile and residence is very largely a matter of intention, coupled with the actually making up of the mind that a particular place is to be a permanent home and domicile.

March 13, 1934

INDIANS: ARE CITIZENS OF STATE; UNITED STATES

Dear Sir:

I am in receipt of your letter of the 9th inst., making several inquiries with reference to Indians in this State.

Your inquiries involve the question of whether the Indians of Florida are citizens of this State, and your attention is called to the following citations relating to that subject:

"All Indians born within the territorial limits of the United States are declared to be citizens of the United States. The granting of citizenship to Indians shall not in any manner affect the right of any Indian to tribal or other property."
Vol. 8, U. S. C. A., Section 3.

"All persons born or naturalized with the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article XIV, Section 1, Amendments U. S. Const.

"A citizen of the United States, native born or naturalized, is a citizen of that State in which he has his legal residence."

Myers v. Murray, Nelson & Co., 43 Fed. 695, 698; Sharon v. Hill, 26 Fed. 337, 343, 344. Gassies v. Ballon, 6 Pet. 761, 8 L. Ed. 573.

"Every male person of the age of twenty-one years and upwards that shall, at the time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year and in the County for six months, shall in such County be deemed a qualified elector at all elections under this Constitution. Naturalized citizen of the United States at the

time of and before registration shall produce to the registration officers his certificate of naturalization or a duly certified copy thereof."

Article VI, Section 1, State Const.

From the above it appears that Florida Indians are citizens of this State and are entitled to all the privileges of other citizens of this State, including the right of suffrage and the ownership of property as individuals.

August 16, 1934

DISHONORABLE DISCHARGE FROM U. S. ARMY
DOES NOT BAR QUALIFICATIONS

Dear Sir:

Answering your letter of the 14th instant, I beg to say I do not find anything in the Constitution or statutes of the State of Florida depriving you of citizenship on account of a dishonorable discharge from the United States Army.

With reference to the qualifications of voters, I refer you to Section 4, Article VI of the State Constitution, which provides that no person convicted of a felony by a Court of Record is qualified to vote in any election unless restored to civil rights. You are also referred to Section 248, Compiled General Laws of Florida, 1927, which provides that no person shall be entitled to vote who may have been convicted of bribery, perjury, or larceny, or of any infamous crime in any Court of this State or any other State. To the same effect, see also Section 458 of the same compilation.

November 28, 1934

DEFINITION OF—AS PERTAINING TO AMENDMENT TO ARTICLE X
OF THE STATE CONSTITUTION RELATING TO EXEMPTIONS
OF HOMESTEAD FROM TAXATION

Dear Sir:

I am in receipt of your letter of the 24th inst., requesting my interpretation of the word "citizen" as used in the amendment to Article X of the State Constitution, adopted at the General Election of 1934.

In reply I beg to say our Constitution and statutes do not appear to define the term "citizen." Neither does it appear that our Supreme Court has rendered any decision giving a definition of the term "citizen" applicable to the above amendment. In this situation, it is necessary to

CITIZENS AND CITIZENSHIP

refer to the Constitution of the United States and other authorities in order to reach a conclusion as to the meaning of said term as used in said amendment to the State Constitution.

We first quote body of the amendment as follows:

"Section 7. There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article 10 of the Constitution of the State of Florida up to the valuation of \$5,000.00; provided, however, that the title to said homestead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both."

Section 1 of Article XIV of the United States Constitution reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws:"

Section 2 of Article IV of the United States Constitution reads in part as follows:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

1 Ruling Case Law 795, Aliens 1, defines a "citizen" as follows:

"A 'citizen,' in the popular and appropriate sense of the term, is one who by birth, naturalization, or otherwise, is a member of an independent political society, called a State, kingdom or empire, and as such is subject to its laws and entitled to its protection in all his rights incident to that relation. The derivation of the word from the latin *civitas* conveys the idea of connection or identification with the State or government and participation in its functions, and therefore, while it implies the right of residence, it is not to be implied from the fact of residence." 11 Corpus Juris 776, Citizens 2, contains this language:

"When used in a national sense, 'citizenship' and 'domicile' are distinguishable, but 'State citizenship' and 'domicile' are substantially synonymous."

Words and Phrases (3rd Series), Vol. 2, page 52, contains the following language:

"By 'citizen of the State' is meant a citizen of the United States whose domicile is in such State." *Prowd v. Gore*, 207 Pac. 490, 491, 57 Cal. App. 458.

Words and Phrases (3d Series), Vol. 2, page 55, contains the following language:

"The term 'citizen,' as used in the Judiciary Act with reference to the jurisdiction of the Federal Courts, is substantially synonymous with the term 'domicile,' and denotes a citizen of the United States residing permanently in a particular State." *Delaware L. & W. R. Co. v. Petrowsky*, 250 F. 554, 557.

We also quote headnotes 4, 6 and 7 from case of *Wade vs. Wade*, 93 Fla. 1004, 113 So. 374, as follows and also refer you to the case of *Warren vs. Warren*, 73 Fla. 764, 75 So. 35:

4. "As used in Section 3189, Rev. Gen. Stats. 1920, relating to the prerequisite two years' residence in this state of a complainant in a suit for divorce, the word 'reside' has reference to the complainant's legal residence, which means the place which an individual has made the chief seat of his household affairs or home interests, from which, without some special mission, he has no intention of departing, from which when he has departed, he is considered to be away from home, and to which, when he has returned, he is considered to have returned home."

6. "A legal residence or domicile in this state may be acquired by one who, coming from another state or country, actually lives in this state, with the intention of permanently remaining here. In such a case a domicile by choice is established. Legal residence consists of fact and intention. Both must concur."

7. "The mere intention to acquire a new domicile, unaccompanied by an actual removal, avails nothing; neither does the fact of removal avail without the intention."

In consideration of the foregoing quotations and particularly the definition of "citizens" in Article XIV of the United States Constitution, it is my opinion that the word "citizen" as used in the amendment to Article X of the State Constitution adopted at the General Election of 1934 and relating to exemptions of homesteads from taxation means any "citizen" of the United States who is a resident of the State of Florida with the intention to make this State his permanent home.

You make further inquiry as to whether or not it is necessary that a bona fide resident of the State of Florida having a homestead in the State of Florida within the valuation of the amendment is required to

CITIZENS AND CITIZENSHIP

be a "citizen" of the United States to enjoy the benefits of said amendment.

In reply to this last inquiry, I refer you to Section 248, Compiled General Laws of Florida, 1927, defining the qualification of electors and containing the requirement that electors be "citizens" of the United States. It appears to me that our statutes contemplate that in order to be a "citizen" of the State of Florida one must also be a "citizen" of the United States and, in my opinion, it is necessary for a bona fide resident of the State of Florida, having a homestead in this State within the valuation of said amendment, to be a "citizen" of the United States in order to enjoy the benefits of said amendment.

SECTION 4

CONVICTS

June 20, 1933.

CAPTAINS AND GUARDS FOR CONVICTS WORKING FOR STATE
ROAD DEPARTMENT, SHALL BE HIRED BY ROAD DEPARTMENT
BUT MAY BE DISMISSED BY BOARD OF STATE INSTITUTIONS

Dear Sir:

Under the provisions of Chapter 9126, Laws of Florida, Acts of 1923, as amended by Senate Bill No. 523, Chapter 16181, Acts of 1933, which became a law as amended June 7, 1933, authorizes the State Road Department to employ all "Captains and guards" for State convicts assigned to that department; however, all State convicts, including those assigned to the State Road Department, are required to be maintained and worked under rules and regulations, and shall at all times be under the supervision of the State Commissioner of Agriculture and the Board of Commissioners of State Institutions.

Under the provisions of the amended Act "All State convicts not assigned to the State Road Department, shall be worked only under the direct control of Captains and guards selected by the Commissioner of Agriculture and approved by the Board of Commissioners of State Institutions."

Under the provisions of the amended Act, it appears that the State Road Department has exclusive authority to employ captains and guards for convicts assigned to that department and that the Commissioner of Agriculture shall have nothing whatever to do with the selection of such captains and guards. It appears further that the Board of Commissioners of State Institutions are not required to approve the captains and guards employed by the State Road Department. However, it appears that "if at any time it shall appear to the Commissioner of Agriculture that any captain or guard employed in connection with the Prison Department of this State is not a fit person to occupy such position he shall immediately report his findings, together with a statement of the facts upon which his conclusion is based to the Board of Commissioners of State Institutions; and if such captain or guard is working convicts on the public roads, the Commissioners of Agriculture shall transmit a copy of the report to the chairman of the State Road Department, * * * or to the Board of County Commissioners, in case an employee in a county camp is involved. It shall thereupon be the duty of the Commissioners of State Institutions to immediately meet and consider the report of the Commissioner of Agriculture, and such other matters connected therewith as may by said Board be deemed proper, and thereupon the Board shall determine whether or not such captain

CONVICTS

or guard shall be longer retained in connection with the prison system of this State. If the Board shall concur in the findings of the Commissioner, then such captain or guard shall be immediately discharged and shall not thereafter be employed in any capacity in or about a prison farm or prison camp in this State."

It is my opinion that convict camps established by the Road Department and the employment of State convicts and captains and guards will constitute a part of the prison system of this State, and that while the Commissioner of Agriculture and the Board of Commissioners of State Institutions may have no voice in the selection and employment of captains and guards for convicts employed by the State Road Department, such convicts must be worked under the rules and regulations of the prison department, and further, that the captains and guards employed by the Road Department shall be subject to dismissal by the Board of State Institutions upon the recommendations of the Commissioner of Agriculture, as stated above.

June 20, 1933.

**CAPTAINS AND GUARDS EMPLOYED BY ROAD DEPARTMENT ARE
SUBJECT TO RULES AND REGULATIONS PRESCRIBED BY THE
PRISON DEPARTMENT AND ARE SUBJECT TO REMOVAL
BY BOARD OF COMMISSIONERS AS PRESCRIBED BY
LAW**

Dear Sir:

Under the provisions of Chapter 9126, Laws of Florida, Acts of 1923, as amended by Senate Bill No. 523, Chapter 16181, Acts of 1933, which became a law as amended June 7, 1933, authorizes the State Road Department to employ all "Captains and guards" for State convicts assigned to that department; however, all State convicts, including those assigned to the State Road Department, are required to be maintained and worked under rules and regulations, and shall at all times be under the supervision of the State Commissioners of Agriculture and the Board of Commissioners of State Institutions.

Under the provisions of the amended Act "All State convicts not assigned to the State Road Department, shall be worked only under the direct control of Captains and guards selected by the Commissioner of Agriculture and approved by the Board of Commissioners of State Institutions."

Under the provisions of the amended Act, it appears that the State Road Department has exclusive authority to employ captains and guards for convicts assigned to that department and that the Commissioner of Agriculture shall have nothing whatever to do with the selection of such captains and guards. It appears further that the Board of Commissioners of State Institutions are not required to approve the captains and guards employed by the State Road Department. However, it appears

CONVICTS

that "if at any time it shall appear to the Commissioner of Agriculture that any captain or guard employed in connection with the Prison Department of this State is not a fit person to occupy such position he shall immediately report his findings, together with a statement of the facts upon which his conclusion is based to the Board of Commissioners of State Institutions; and if such captain or guard is working convicts on the public roads, the Commissioner of Agriculture shall transmit a copy of the report to the chairman of the State Road Department, * * * or to the Board of County Commissioners, in case an employee in a county camp is involved. It shall thereupon be the duty of the Commissioners of State Institutions to immediately meet and consider the report of the Commissioner of Agriculture, and such other matters connected therewith as may by said Board be deemed proper, and thereupon the Board shall determine whether or not such captain or guard shall be longer retained in connection with the prison system of this State. If the Board shall concur in the findings of the Commissioner, then such captain or guard shall be immediately discharged and shall not thereafter be employed in any capacity in or about a prison farm or prison camp in this State."

It is my opinion that convict camps established by the Road Department and the employment of State convicts and captains and guards will constitute a part of the prison system of this State, and that while the Commissioner of Agriculture and the Board of Commissioners of State Institutions may have no voice in the selection and employment of captains and guards for convicts employed by the State Road Department, such convicts must be worked under the rules and regulations of the prison department, and, further, that the captains and guards employed by the Road Department shall be subject to dismissal by the Board of State Institutions upon the recommendations of the Commissioner of Agriculture, as stated above.

July 5, 1933.

ROAD DEPARTMENT HAS AUTHORITY TO EMPLOY GUARDS
FOR ROAD FORCE

Dear Sir:

This is in reply to your letter of June 30th, requesting advice as to the steps to be taken in deputizing your captains and guards so that they may carry out the necessary operations of your convict camps.

It is my opinion that Senate Bill No. 523, Chapter 16181, Acts of 1933, places under the State Road Department exclusive authority to employ all captains and guards required for the efficient use of the State Convict Road Force.

It is also my opinion that under the laws now existing with reference to the State Convict Road Force and the custody of prisoners, your employment of a guard or captain, as such, vests in him the authority to maintain the custody of prisoners placed in his charge, in order to pre-

CONVICTS

vent their escape and to enforce discipline; and further that in the event of escape any such guards would be authorized to re-arrest such escaped prisoner wherever found.

It is not necessary to formally deputize the guards or captains so employed, but I believe it best to give, in the form of a written commission or otherwise, evidence of such proper and lawful employment.

August 28, 1934.

GUARD HIRE—SEE BROWN VS. ST. LUCIE COUNTY, 153 SO. 906,
IN CUSTODY OF COUNTY COMMISSIONERS

Dear Sir:

Answering your letter of the 27th instant, making inquiry with reference to a recent case pending in the Supreme Court, relative to guard hire, I refer you to Brown vs. St. Lucie County, decided on March 7, 1934, and reported in 153 So. 906.

Answering your further inquiry, I beg to say the County Commissioners are custodians of all County buildings, including the Court House. See Sections 2153 and 2384, Compiled General Laws of Florida, 1927.

September 15, 1934.

COMMISSIONER OF AGRICULTURE SHOULD BE SERVED WITH
PROCESS, ORDERS, ETC., CONCERNING

Dear Sir:

This acknowledges receipt of yours of the 13th instant, wherein you inquire by whom a court order directing that prisoners be remanded into custody of the local officials or released altogether, should be honored.

In reply thereto I beg to state that under Section 8577, Compiled General Laws of 1927, it is provided that the prison is under the immediate supervision of the Commissioner of Agriculture, and that the Superintendent of the Prison shall be the clerk thereof.

By Sections 8582 and 8583, Compiled General Laws of 1927, it is provided that prisoners shall be delivered to the Superintendent at the Prison, and that the Commissioner of Agriculture may receive any State convict who is to be restrained under the provisions of law, from any sheriff at any place in Florida.

By Section 8613, Compiled General Laws of 1927, 1934 Supplement, having to do with the use of the State convicts by the State Road Department, it is provided that all State convicts shall be maintained and worked under rules and regulations, and shall be at all times under the supervision of the State Commissioner of Agriculture and the Board of Commissioners of State Institutions.

CONVICTS

You will also note that Section 8580, Compiled General Laws of 1927, specifically provides that all process to be served within the precincts of the Prison shall be directed to and served upon the Commissioner of Agriculture.

You are further familiar with the consistent practice of your Department in keeping the Prison Records here in Tallahassee, where there is maintained in conjunction with your office, what is known as the State Prison Department. This is pursuant to Sections 8584 and 8585, Compiled General Laws of 1927.

From a reading of these various statutes as well as the consistent departmental construction thereon, I am of the opinion that you are the one upon whom process or orders having to do with the remanding of prisoners into the custody of local sheriffs or other police officers, or orders providing for their release altogether, should be served; I am further of the opinion that such orders should be directed to you and honored by you alone.

While I realize that a writ of habeas corpus may be served upon and must be honored by any person who has the actual physical custody of the prisoner, I believe that the proper practice would be to direct all these writs to you, so that proper record may be kept thereof. In the event a writ is served upon one of your subordinate employees having actual physical custody, such as the Superintendent of the State Prison or a captain of the guards at one of the Road Camps, it will be necessary for such individual to honor such writ, but you should require him to immediately notify your office in all such cases, so that you may have knowledge of the same and be able to keep a record thereof.

I am certain that the various courts of Florida realize the seriousness of this matter, and the absolute necessity of a proper system in handling these matters, particularly in view of the fact that the State convicts are scattered throughout the State, and that such courts will readily cooperate with you in your endeavors to protect the State from possible serious error in the administration of our prison system.

SECTION 5

CORPORATIONS

March 9, 1933.

DISSOLUTION MUST BE IN LIKE MANNER AS DOMESTIC
CORPORATION*Dear Sir:*

This refers to your favor of March 9th., with reference to dissolution of a foreign corporation that has obtained permit to do business in the State of Florida on the ground and for the reason that said foreign corporation, under its permit, has failed to pay its corporation tax.

It is my opinion that the foreign corporation that has obtained permit to do business in the State of Florida stands upon the same footing as the corporation originally organized under the laws of the State of Florida. Thus it is, that I reach the conclusion that a foreign corporation cannot bring about a proper dissolution of its permit without first making its report as required by law and paying the tax. Of course, if such corporation has withdrawn all of its property from the State, and is doing no business in the State, there is nothing further to be done, but if it wishes to properly dissolve its permit, I am clearly of the opinion that it must comply with the law as to filing its report and paying its tax.

February 10, 1933.

PERMIT FROM SECRETARY OF STATE NECESSARY TO TRANSACT
BUSINESS, THOUGH QUALIFIED UNDER SECURITIES ACT*Dear Sir:*

I have your letter of the 9th instant, inquiring whether the qualification of a foreign corporation under Chapter 14899, Acts 1931, known as the Florida Securities Commission Act, relieves such corporation from the requirement to file in the office of Secretary of State a duly authenticated copy of its charter or articles of incorporation, and receive a permit to transact business in this State.

My opinion in the matter is that it does not. In other words, the qualification under the one Act does not relieve from the requirement to qualify under the other. A foreign corporation desiring to transact business of any character in the State must first qualify by filing in the office of Secretary of State a duly authenticated copy of its charter or articles of incorporation, and thereupon receive a permit to transact business in the State. If then it wishes to sell securities in the State, which are regulated by Chapter 14899, it must have also a permit from the Florida Securities Commission so to do.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CORPORATIONS

February 15, 1934.

CHARTER FEES ON CORPORATION WHOSE CAPITAL STOCK IS
SUBJECT TO INCREASE SHALL BE ON LESSER SUM UNTIL
INCREASE IS ACTUALLY MADE

Dear Sir:

In response to your communication of February 15, 1934, it is my opinion that where the charter of a corporation provides that the capital stock shall be \$25,000, and includes a provision that the sum "may be increased to \$250,000 when properly authorized," the fees properly payable under Section 5981, Compiled General Laws 1927, should be based upon the actual capital stock of \$25,000, and not on the two hundred and fifty thousand dollar basis.

The last proviso in the said Section of the statute mentioned, provides that no corporation "shall be authorized to increase its capital stock without paying to the Secretary of State the charter fees provided by the foregoing schedule upon such increase of stock."

The charter contemplates the necessity of a formal increase in stock, and the proviso mentioned covers such increase when made, and protects the State in the payment of the acquired charter fees on such increase.

April 16, 1934.

USE OF WORD "TRUST" NOT AUTHORIZED FOR CORPORATION
NOT EXERCISING TRUST FUNCTIONS IN THIS STATE

Dear Sir:

This acknowledges receipt of your communication of April 16, 1934, in which you advise that application has been made to your office for a permit to qualify as a foreign corporation by Kansas City Title & Trust Co. The application is for a permit to carry on solely the business of writing title insurance, and the said corporation does not intend to exercise any trust functions in the State of Florida.

It is my opinion that under the provisions of Section 6124, Compiled General Laws of 1927 (1934 Supplement) providing that "no company hereafter organized under any other Act shall use the word 'trust' as a part of its name," and under the provisions of Section 6127 and Section 6145, Compiled General Laws of 1927, the use of the word "trust" as a part of the name of such corporation would be in violation of the laws of Florida.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CORPORATIONS

553

May 8, 1934.

USE OF WORD "TRUST" IN NAME PERMITTED BY COMPANY
AUTHORIZED TO DO BUSINESS IN 1924 AND RESTRICTED
NOT TO ENGAGE IN BANKING OR TRUST BUSINESS

Dear Sir:

Under date of April 12, 1934, you wrote us with reference to the use of word "Trust" in name of Foreign Corporation, Kansas City Title and Trust Matter, and we replied thereto on April 16th, which you acknowledged receipt of on April 18th.

We are advised today by the office of the Secretary of State that in the Spring of 1924 a permit was granted to Kansas City Title & Trust Company to do business in the State of Florida—the only restriction being that it should not engage in the business of a bank or trust company. It will not be necessary, therefore, for Kansas City Title and Trust Company to procure a new permit, as we understand it to be the intention of the parties representing the same to continue to function under the old permit granted in 1924.

As far as our office is concerned, of course, the matter is closed.

May 15, 1934.

FOREIGN—NOT FOR PROFIT—MUST QUALIFY TO TRANSACT ITS
AFFAIRS IN FLORIDA

Dear Sir:

In response to your communication of May 11, 1934, regarding the above subject, we did under date of May 14th wire as follows:

"Relet Eleventh. Corporation must qualify in Florida. Letter follows."

We understand from your communication that the corporation involved has as its object the administration of the Divisional Code for general contractors, pursuant to the National Industrial Recovery Act; that such corporation has no capital and no stock and is not being and will not be, operated for profit.

Such non-profit corporation must qualify in Florida pursuant to the provisions of Sections 6506 et seq., Compiled General Laws of Florida 1927. The procedure is as follows:

Such corporation must file in the office of the Secretary of State a duly authenticated copy of its charter or articles of incorporation, together with a charter fee of \$25.00 and a filing fee of \$5.00.

Upon the filing of such copy and the payment of the fee aforesaid, and if the objects of the corporation are such as are not prohibited by or contrary to the laws of Florida, the Secretary of State issues a permit

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CORPORATIONS

to such corporation to carry on in the State of Florida the objects and purposes of its incorporation.

From and after the issuance of such permit it is then lawful for such corporation not for profit to carry on in the State of Florida the objects and purposes of its incorporation, so far as the same are not contrary to or prohibited by the laws of this State; and such corporation may contract and be contracted with, may sue and be sued, may incur indebtedness, and may own alien and dispose of property, real and personal, to the same extent and to like effect as corporation not for profit organized under the laws of Florida of the same general character as a foreign corporation to which such permit has been issued.

This is the only requirement in the laws of Florida with reference to the qualification of such corporations, and they are specifically exempt from the annual report and filing fee statutes, as well as exempt from the statute with reference to the designation of an officer or agent for the service of process (See Section 4270, Compiled General Laws of 1927, and Section 5977 (6), Compiled General Laws of 1927, 1934 Supplement).

Thus there will be no further annual costs and the initial expense is the \$30.00 above set forth.

May 2, 1934.

NAME OF RESIDENT AGENT IS REQUIRED TO BE FILED AS
PRINTED BY INCORPORATION LAW—AND NAME CON-
TAINED IN ANNUAL TAX REPORT IS NOT A
COMPLIANCE WITH SAME

Dear Sir:

This is in response to your communication of May 1st, in which you ask whether or not a corporation, which has filed in your office its annual report as required by Section 1 of Chapter 15726, Acts of 1931, now appearing as Section 5977 (1), Compiled General Laws of 1927, 1934 Supplement, and as part of the information required, given the name and address of the resident agent upon whom service of process may be had, has complied with Chapter 11829, Acts of 1927, now appearing as Sections 4257, 4258 and 4259, Compiled General Laws of 1927.

It is my opinion that a corporation merely giving the name of the resident agent as required by the said Act of 1931 as part of the annual report, has not complied with the said Act of 1927. These two Acts cover entirely different fields, and the said Act of 1931 intends to require the statement of the name of the resident agent in the report, which resident agent has been previously and validly designated as such by the formal filing of a certificate and acceptance of such appointment, or the designation of the Clerk of the Circuit Court in lieu thereof.

CORPORATIONS

June 27, 1934.

NOT AUTHORIZED TO ACT IN FISHING INDUSTRY

Dear Sir:

I am in receipt of your letter of the 24th instant, referring to Chapter 14675, Acts of 1931, and making inquiry as to the organization of Cooperative Marketing Associations for the fishing industry.

In reply I beg to say a Co-operative Marketing Association for the fishing industry would not appear to be authorized by Chapter 14675, Acts of 1931, but Chapter 7384, Acts of 1917, being Sections 6385 to 6390, inclusive, Compiled General Laws of Florida, 1927, would appear to authorize such an organization. In this connection, I have taken into consideration Section 20 of Chapter 14675, which provides that no person, firm, corporation or association shall be entitled to use the word "co-operative" as part of its corporate or other business name or title unless it has complied with the provisions of this Act. Such Section would not appear to be authorized by the title of said Chapter and I seriously doubt if such prohibition can apply to associations organized under said Sections 6385 and 6390, inclusive.

June 29, 1934.

NOT AUTHORIZED TO EXECUTE DEEDS UNTIL THEY FILE REPORT AND PAY TAX REQUIRED BY LAW

Dear Sir:

I am in receipt of your letter of the 28th instant, enclosing communication from Mr. ———, Liquidating Agent, Sarasota, making inquiry if corporations may execute deeds when they have failed to comply with Chapter 14677, Laws of Florida, Acts of 1931.

In reply your attention is called to Section 5 of said Chapter 14677, which provides as follows:

"Any corporation failing to comply with the provisions of this Act for six months shall forfeit its corporate and charter privileges and shall not be permitted to maintain any action in any Court in this State until such reports are filed and all fees due hereunder paid."

You will note that Section 6 of said Act, as amended by Chapter 15726, Acts of 1931, provides that certain corporations are exempt from the provisions of said Act.

In my opinion all corporations, except such corporations as are exempt, failing to comply with the provisions of Chapter 14677, for six months are not authorized to exercise any corporate or charter privileges and would not, therefore, be authorized to execute deeds of conveyance. I do not think deeds of conveyance executed by corporations under such circumstances could be considered as conveying a good merchantable title.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CORPORATIONS

October 24, 1934.

FOREIGN—FEES TO BE PAID ON FULL AMOUNT OF CAPITAL TO
BE EMPLOYED IN THIS STATE

Dear Sir:

In your letter of October twenty-third, you state that a certain foreign corporation wants to qualify to do business in this State; that they propose to employ several thousand dollars in their business in this State, only a small part of which will be paid as the initial cash payment, the balance to be paid in annual installments. You ask whether the charter fee shall be computed on the whole amount proposed to be employed in the State or only on the initial payment.

It is my opinion that the fee to be paid under the said act should be computed on the full amount of the capital to be employed in the State, rather than on an installment thereof.

SECTION 6

HOLIDAYS

April 13, 1934.

JUDGMENTS RENDERED IN STATE COURT ON, GOOD: IN CITY COURT, GOVERNED BY ORDINANCE, ETC., OF CITY

Dear Sir:

I am in receipt of your letter of the 4th inst., making inquiry if February 22nd, George Washington's birthday, is a legal holiday in the State of Florida and, if so, whether the City Courts are allowed to hold Court or render judgments on that date.

Section 6932 (4846), Compiled General Laws of Florida, 1934 Supplement, designates certain dates as legal holidays and February 22nd, Washington's birthday, is one of the dates so designated.

Practically all of the Cities and Towns of this State are governed locally by special legislative charter Act. A search of all these statutes would require more time than the various duties of this office would permit. If it is necessary for you to have this information as to any particular Town or City, I suggest that you consult your correspondent attorney in this State.

As to the general law on the subject of rendition of judgments on holidays in this State, I beg to advise you as follows:

1. Under the ruling of our Supreme Court in the case of *Higginbotham vs. State*, 88 Fla. 26, 101 So. 233, a judgment and sentence entered on Sunday is void.

2. Under the ruling of our Supreme Court in the case of *Russ vs. Gilbert*, 19 Fla. 54, a judgment may be entered on a holiday other than Sunday.

The last paragraph of the opinion in said case reads as follows:

"It was suggested and urged with commendable patriotic fervor that the default having been entered on the 'glorious fourth' of July, it was void, that day being *dies non*, or a national holiday. Our statute on that subject merely provides that the fourth of July shall, in regard to bills and notes, be treated as a public holiday and presentation for acceptance or payment may be made on the preceding day. Courts and business are not inhibited on those days."

Our present statute is very similar to the statute mentioned in the above quotation, except that quite a number of other dates are now named as legal holidays. In connection with the above mentioned case of *Russ vs. Gilbert*, I refer you to 25 R. C. L., 1449, Sundays and Holidays 49.

HOLIDAYS

June 4, 1934.

MEMORIAL DAY NOT INCLUDED

Dear Sir:

I am in receipt of your letter on the 31st ult., making inquiry whether May 30th, Memorial Day, is a State holiday in the State of Florida.

Section 6932, Compiled General Laws of Florida, 1927, designates the legal holidays in this State. Section 6934, originally passed as Chapter 9326, Acts of 1923, makes the 11th day of November, known as "Armistice Day," a legal holiday. Section 6935, originally passed as Chapter 12101, Acts of 1927, makes the 30th day of May in each year, known as "National Memorial Day," a legal holiday in this State.

The 1933 Legislature, by Chapter 16067, amended the above mentioned Section 6932, designating the legal holidays in this State. In such amendment Armistice Day is included, but May 30th, National Memorial Day, is omitted. It would, therefore, appear that the amendment of Section 6932, which designates and names the legal holidays in this State and which omitted to name May 30th as one of such holidays by implication repeals Section 6935, above mentioned, and that May 30th is no longer a legal holiday in this State.

July 19, 1934.

PROCLAMATION OF HOLIDAY FOR BANKS BY GOVERNOR
UNAUTHORIZED*Dear Sir:*

This acknowledges receipt of communication enclosing letter under date of July 5th.

This communication enclosed with your letter advises that the banks in _____ County would like to have a legal holiday declared on the occasion of the Parade in connection with the American Legion Convention in October; and asks whether or not there is authority in the Governor to issue a Proclamation authorizing such holiday.

In reply I beg to say that after a very careful search of the statutes and Constitution of Florida, I am unable to find any authority for the Governor to proclaim a legal holiday, which would authorize banks generally or of a given community to close their doors and thus affect the rights and obligations of patrons or those dealing in commercial paper being handled by such banks. The statutes themselves specifically provide for the legal holidays in this State, and the Governor is without authority to add to the list given. (See Chapter 16067, Acts of 1933).

It is with much regret that I am forced to render this opinion, because personally I am in sympathy with the desire of the banks of Miami to cooperate with and take part in the activities of the National American Legion Convention. But with the law as it is, I cannot do otherwise.

SECTION 7

INSPECTION LAWS

March 8, 1933.

ALL PRODUCTS USED IN MANUFACTURE OF ICE CREAM EXCEPT
FRUITS, NUTS AND FLAVORING, MUST BE PASTEURIZED

Dear Sir:

Replying to your letter of March 3rd, in which you request my interpretation of the fifth paragraph of Section 2 of Chapter 14523, Acts of 1929, relative to the question of ice cream in this State, permit me to say:

This paragraph reads as follows:

"All products included in the mixture to make ice cream except flavor, fruits and nuts shall be pasteurized before freezing. Pasteurization for the purpose of this Act is defined to mean heating of ingredients to a temperature of 145° Fahrenheit, and held at said temperature for thirty minutes, of Flash at 185°."

In construing the provision quoted above, consideration should be given to the object to be accomplished by the requirement for the pasteurization of the ingredients of ice cream. The obvious purpose of the pasteurization of the ingredients of ice cream being to protect and conserve the public health, the requirement relative thereto should be construed so as to give it such force and effect as will accomplish the purpose intended.

Therefore, I construe the provision quoted to mean that with the exception of *fruits, nuts and flavoring* all the ingredients going into the ice cream mixture after being mixed, should immediately before freezing be pasteurized by heating to a temperature of 145° Fahrenheit and held at said temperature for thirty minutes of Flash at 185°.

The fact that the milk and/or other ingredients of the mixture for ice cream may have previously been pasteurized, would not obviate the necessity for pasteurization of the mixture immediately before freezing it into ice cream, this for the reason that the milk and/or other ingredients might have been pasteurized and later exposed to germs.

June 22, 1933.

CITY ORDINANCE NOT ABROGATED BY MILK BOARD LAW

Dear Sir:

Replying to your letter of June 17th, permit me to say paragraph (a) of Section 4 of Senate Bill 786, Chapter 16078, Acts 1933, the same being an Act to regulate and control the distribution of fluid milk, etc., contains this provision:

"Provided, however, that nothing contained in this Act shall be construed to abrogate or affect the status, force or operation of any provision of the public health law, the public service law, the State sanitary code, milk products law, except as provided for in Sub-section 4 of Section 9 of this Act, State ice cream law, or any local health ordinance or regulation, and provided further that the Board shall not supervise or regulate any natural marketing area except upon petition of a group of representative producers who petition the Board to invoke the provisions of this Act as herein provided."

You will observe from these provisions of the section that your municipal milk ordinance has not been abrogated by the provisions of Senate Bill 786.

December 7, 1933.

MILK REQUIRED TO BE PASTEURIZED WHEN USED
IN ICE CREAM, ETC.*Dear Sir:*

Replying to your letter of November 27th, permit me to say under the provisions of Section 8 of Chapter 16047, Acts of 1933, all milk and milk products used in the manufacture of ice cream, frozen custard, ice milk or sherbet, or the entire mix with or without flavor or color, shall be pasteurized in accordance with rules and regulations to be adopted and promulgated by the Commissioner of Agriculture, except when the milk products used are fresh milk and cream meeting the requirements of the local health department of a town or city, for consumption in such town or city, as raw milk or cream, where a health department exists.

Under the provisions of Section 8 quoted above, even where the milk and cream used in the mix come within the exception, if other milk or cream not coming within the exception is added to the mix, then the entire mix should be pasteurized according to the rules and regulations adopted and promulgated by the Commissioner of Agriculture.

INSPECTION LAWS

January 30, 1934.

COMMERCIAL FEEDING STUFF SOLD IN BAGS CANNOT
BE HELD TO BE IN BULK*Dear Sir:*

Replying to your favor of January 25th, permit me to say Section 3 of Chapter 5452, Acts of 1905, which is Section 3257 of the Compiled General Laws of 1927, contains the following provisions:

"The Sheriffs of the counties of this State are hereby authorized, and it is hereby made their duty to seize and sell at public sale, each and every bag, barrel or package of commercial feeding stuffs manufactured, imported into, or sold in this State which shall not have securely attached, the tag or label, and stamp mentioned in this Section; Provided, that should the owner show to the satisfaction of the Sheriff such tag or label or stamp had been attached and the same had become detached, the Sheriff shall release the same without cost to the owner. All commercial feeding stuffs shipped in bulk to consumers shall be subject to the penalties provided for in this law, upon the attempt to evade the guaranteed analysis, and the payment of the inspection fee provided for in this law."

The same Section contains a proviso which reads as follows:

"Provided that nothing in this Chapter shall be construed to restrict or avoid sales of commercial feeding stuff material in bulk to each other by importers, manufacturers or manipulators who mix commercial feeding stuffs for sale, or as preventing the free and unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix commercial feeding stuffs for sale."

You ask for an interpretation of the words "in bulk" under the law. Permit me to say that in view of the provisions of the statute first above quoted, and in view of the definition of the word "bulk" as given in Bouviers' Law Dictionary, which reads as follows: "Bulk.—Merchandise which is neither counted, weighed, nor measured," it is my opinion that commercial feeding stuff which is offered for sale or sold "in bags" cannot be held to be in bulk.

March 17, 1934.

MILK—PRICES FIXED BY BOARD GOVERN

Dear Sir:

I am in receipt of your letter of the 16th inst., with reference to the Milk Control Act, Chapter 16078 of 1933, and the effect of orders of the Milk Control Board under such Act. Your letter contains the following inquiries:

INSPECTION LAWS

"Is a farmer with one or two cows, living a number of miles from DeFuniak Springs, obliged to sell his milk at the price fixed by the board, or as a farmer, may he sell a very limited quantity, irrespective of board price?

"Can an individual living in DeFuniak Springs, who keeps one cow for his personal use, sell the small surplus which he might have at such a price as he might wish, or is he bound by the milk board laws?"

The records in the office of the Milk Control Board show that on March 10, 1934, Order No. 39 was passed to be effective on March 12, 1934, covering the sale of milk at DeFuniak Springs and all districts within a radius of three miles of the Court House of Walton County. This order was filed in the office of the Secretary of State on March 15, 1934, and a specific price for milk is established in the above area.

After reading the above mentioned statute carefully and the above mentioned order, made in pursuance to said statute, it is my opinion that all milk sold in the above mentioned area must be sold at the price fixed by the Milk Control Board regardless of quantity and regardless of whether the milk is produced in said area or brought into said area from outside territory. There appears to be no exception for the sale of limited quantities of milk whether from cows kept for commercial purposes or cows kept for personal use with an occasional small sale.

March 30, 1934.

EGG CLASSIFICATION LAW—WITH REFERENCE TO ADVERTISING
—CLASSIFICATION MUST BE PLAIN

Dear Sir:

This acknowledges your communication of March 1, 1934, wherein you inquire whether or not an advertiser in declaring the classification of his eggs has the right to use in direct connection with the statement of classification descriptive or modifying terms. You give the following epithetical example:

"Extra Fancy, One Day Old, All White, Heavy Weight, Infertile, Yard Shipped Eggs."

You will note that sub-paragraph (d) of Section 2 of said Act requires that the advertisement or circular must *plainly designate* the classification to which the eggs being offered for sale properly belong, that is, cold storage eggs, shipped eggs, or fresh Florida eggs. By "plainly designating," I understand the statute to mean that the same can be ascertained at a glance by the prospective purchaser, without having to dispose of a maze of other qualifying adjectives.

It is my opinion, therefore, that the declamation of the classification must be made separate and apart from other claims as to age or quality.

INSPECTION LAWS

April 25, 1934.

AUTHORIZED TO PURCHASE AUTOMOBILE UNDER
CERTAIN CONDITIONS*Dear Sir:*

In your letter of the 33rd instant, you state that you have before you a bill approved for payment by _____, Director of the Milk Control Board, in the sum of \$199.00 for one Plymouth DeLuxe 4-door Sedan Automobile. You state that before approving this for payment out of the General Inspection Funds, you desire my opinion as to its legality.

It is my opinion that the Milk Control Board may in its discretion purchase an automobile to be used in the work incident and necessary in the operations of said Board in executing the Milk Control statute of 1933, if and when the purchase and use of such automobile is by said Board deemed necessary in the performance of the duties imposed upon said Board by Chapter 16078, Laws of Florida, Acts of 1933, and the same may be paid for from the General Inspection Fund when purchased by said Board, and the bill therefor approved by it.

This in my opinion would not violate Chapter 13810, Laws of Florida, Acts of 1929.

April 25, 1934.

BOARD HAS AUTHORITY TO CONTROL PRICES UNDER CONTROL
ACT, OF MILK SOLD TO GOVERNMENT HOSPITAL*Dear Sir:*

I am in receipt of your letter of the 23rd inst., advising that a distributor of milk in the Lake City area accepted a bid for milk and cream from the Government Hospital below the price set by the Milk Control Board, and that his attitude is that the Board has no jurisdiction over the price at which he may sell to a Government Institution.

In reply to your inquiry, I beg to say that I do not know of any Federal or State law exempting sales of milk or cream to Government Institutions from the provisions of our Milk Control Act, Chapter 16078 of 1933. It appears that the Board has authority to control all sales regardless of to whom sales are made.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INSPECTION LAWS

November 21, 1934.

COMMERCIAL FERTILIZERS—FORM OF LABEL OR STAMP
SHOWING PAYMENT OF INSPECTION FEE

Dear Sir:

This is in response to your communication of the 16th instant, wherein you set forth a proposed plan for handling the matter of stamps or labels to evidence the payment of the inspection fee on commercial fertilizers, as follows

"That manufacturers of fertilizer be authorized under a permit issued by the Commissioner of Agriculture to manufacture and sell fertilizers in small packages, substantially as follows: By carrying in plain legible type words to this effect, 'THIS PACKAGE OF FERTILIZER IS MANUFACTURED UNDER AUTHORITY OF FERTILIZER PERMIT NO.—, ISSUED BY THE COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA AND THE HOLDER OF WHICH HAS COMPLIED WITH ALL OF THE REQUIREMENTS OF THE FLORIDA COMMERCIAL FERTILIZER LAW AND ITS RULES AND REGULATIONS. THIS FERTILIZER HAS BEEN REGISTERED WITH THE COMMISSIONER OF AGRICULTURE AND THE MANUFACTURER HAS PAID THE STATE FERTILIZER INSPECTION FEE AFFIXED UNDER THE LAW.'

"Manufacturers would be required by regulation to file application for permit authorizing them to make sale of such tonnage as they contemplate distributing within a given time, such application to be accompanied by remittance of 25¢ for each ton which they desire to sell. It would be further required that holders of permits should file with the Commissioner of Agriculture at stipulated intervals a report showing the distribution of all goods distributed under authority of the permit, such reports giving details as to size of packages, date of sale, name and address of consignee within the State of Florida."

You ask for my opinion as to the propriety and legality of such plan.

Pursuant to Section 3812, Compiled General Laws of 1927, making it your duty to furnish the stamps or labels to be attached in such instances, and authorizing you to prescribe the form therefor, I am of the opinion that you may adopt the plan outlined.

SECTION 8

MOTOR VEHICLES

December 2, 1933.

AUTO THEFT FUND—LIMITATION OF EXPENDITURES—DISPOSITION BALANCE—UNAFFECTED BY GENERAL APPROPRIATION BILL

Dear Sir:

Section 2 of Chapter 9157, Acts of 1923, (Section 3978, Compiled General Laws) provides that the owner of every motor vehicle in this State, except as therein otherwise provided, shall make application for and be granted an official "certificate of title" to such motor vehicle, for which he shall pay \$1.00.

Section 12 of said Act (Section 3985, Compiled General Laws) provides that all moneys received under the provisions thereof, shall be set aside and shall be known as the "Auto Theft Fund," and held and retained in the State Treasury as a separate fund, "and shall be used first to meet the necessary additional expenses incurred * * * in the performance of duties required by this Chapter."

It is further provided in said Section that if at the end of any fiscal year there be a balance in said fund, which has not been previously obligated, said unobligated balance shall be credited to the State Road Fund, etc.

The sole purpose of this Chapter was and is to furnish protection to motor vehicle owners under the police power of the State in the matter of assisting in the recovery of stolen motor vehicles and apprehending the thief.

The provisions of Section 12 of the Act (Section 3985, Compiled General Laws) constitute a specific and continuing appropriation of the "Auto Theft Fund," and in my opinion cannot be amended or limited by provisions contained in the general biennial appropriation bill.

The appropriation herein made is limited to the actual and "necessary" expenses incurred in the administration of said Act, but to that extent the "Auto Theft Fund" is available for the purposes hereinabove stated.

February 2, 1934.

MAXIMUM WIDTH PERMITTED 7 FEET

Dear Sir:

This is in response to your communication of February 1st, in which you ask to be advised as to the maximum width permitted privately owned vehicles under the laws of Florida.

MOTOR VEHICLES

I beg to advise that by Chapter 7275, Acts of 1917, Section 18, as amended by Chapter 8410, Acts of 1921, Section 11, now appearing as Section 1296, Compiled General Laws of 1927, it is provided as follows:

"* * * motor vehicles, trailers and semi-trailers, operated upon the highways of this State, together with a load carried by same, shall not exceed seven feet in width, and twelve feet in height."

February 10, 1934.

**COUNTIES CANNOT ENFORCE SPEED LAW GREATER
THAN STATE LAW**

Dear Sir:

In response to your communication of February 7th, Question 1 is answered by Diagram 4, Unit 2, of Charts showing maximum permissible gross weights, as approved by me, copy of which is enclosed herewith.

Question 2: No specifications for safety chain joining trailer and truck are prescribed by the statutes of Florida.

Question 3: The answer to this question is found in Section 1318, Compiled General Laws of 1927, prescribing the rate of speed on the public highways of this State. This is Section 1 of Chapter 10186, Acts of 1925, and was held by the Supreme Court in the case of Florida Motor Lines, Inc., vs. Ward, 137 So. 163, to have repealed Section 11 of the prior amendatory Act of 1921, still appearing as Section 1296, in so far as applicable to the operation of motor vehicles on the public highways.

It is not legally competent for counties to prescribe or enforce any regulations different than those prescribed by the State law set forth in the said Section 1318, nor can such counties legally enforce such different requirements or limits.

October 24, 1934.

**EXPENDITURES BYRAIL ROAD COMMISSION LAWFUL UP TO 10%
OF PROCEEDS OF TAX IMPOSED**

Dear Sir:

Replying to your letter of October nineteenth, it is my opinion that Section 17 of Chapter 14764, Laws of Florida, Acts of 1931, appropriates ten per cent. (10%) of the proceeds of the tax imposed by Section 16 of said act, after deducting the necessary expenses incurred by the Comptroller in carrying out the provisions of said act, for the necessary expenses of the Railroad Commission in administering the provisions of said Chapter; and that this constitutes a continuing appropriation, which cannot be amended or limited by provisions of the general biennial appropriation act.

MOTOR VEHICLES

In other words, the amount that can be expended from the funds, created by the ten per cent. (10%) mentioned in Section 17 of Chapter 14764, by the Railroad Commission in administering the provisions of the act is limited only to what is actually necessary in carrying out the legislative intent, with reference to the duties imposed thereby on the Railroad Commission.

December 3, 1934.

GOVERNOR NOT AUTHORIZED TO PROHIBIT—SUGGESTED
PROCEDURE

Dear Sir:

I acknowledge receipt of your letter of the 30th ultimo, enclosing letter dated November 26, 1934, and replying, I beg to advise that you cannot lawfully comply with the request contained in the marked paragraph of said letter, since you have no authority to issue an executive order prohibiting any person from driving an automobile in the State of Florida.

The only suggestion occurring to me is that the matter be called to the attention of the sheriff of the county, with instructions, if need be, that the law be enforced in respect to the matters complained of.

In addition to the duties of the sheriff as to the enforcement of the criminal laws, any person having knowledge of the violation of a criminal statute may complain to the proper court or prosecuting officer, and initiate prosecution therefor.

November 6, 1934.

APPLICATION FOR CERTIFICATE NOT REQUIRED TO CONTAIN
TERMS OF SALE

Dear Sir:

This will reply to your letter of November 2nd, with which you enclose letter received by you from the Second District Executive Committee for motor vehicle retailing trade.

You ask to be advised whether or not in my opinion *a false statement concerning the terms of the sale of a motor vehicle would be considered a material fact* under the provisions of Section 6 of Chapter 9157, Acts of 1923, the same being Section 8132 of the Compiled General Laws of 1927.

The section about which you have made inquiry reads as follows, to-wit:

"Any person who shall knowingly make any false statement of a *material fact* either in his application for the certificate of title provided for in Section 3977, Compiled General Laws of

MOTOR VEHICLES

1927, or in any assignment thereof, or who with intent to procure or pass title to a motor vehicle which he knows, or has reason to believe, has been stolen, shall receive or transfer possession of the same from or to another, or who shall have in his possession any motor vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not less than ten dollars, nor more than one hundred dollars, or by imprisonment for not more than ninety days, or both in the discretion of the Court. This provision shall not be exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of motor vehicles, but shall be deemed supplementary thereto."

As I understand your inquiry, you wish to know whether or not a *false statement concerning the terms of sale* made in the application for title certificate could be considered a *false statement concerning a material fact* under the terms of Section 8132, Compiled General Laws.

In considering the question, we should look to Section 3978, Compiled General Laws, which provides for the form of application to be made for a title certificate. Said Section refers to the *material statement of facts* to be included in the application which are as follows, to-wit:

A full description of the motor vehicle, including

- (1) The manufacturer's number.
- (2) The motor number.

(3) The chassis number and any distinguishing mark, together with a statement of the applicant's title, *and of any liens or encumbrances upon such motor vehicle*, and such other information as the Comptroller (Motor Vehicle Commissioner) may require.

You will observe that the statute does not require the applicant for "certificate of title" to state the *terms of the sale*.

The application form provided by the Motor Vehicle Commissioner does not require a statement of the terms of the sale, and I doubt that the Commissioner has authority to require a statement thereof, because "*the terms of the sale*" cannot reasonably be said to pertain to the validity of the "title certificate."

In other words, it seems to me that to require a statement of the terms of the sale would be an invasion by a governmental agency into a private business transaction between the vendor and vendee, about which the State should not be concerned.

It follows from what has been said above that it is my opinion that a statement of the terms of the sale is not a material fact to be included in the application for a "certificate of title" to a motor vehicle.

MOTOR VEHICLES

December 4, 1934.

STATE LIVE STOCK SANITARY BOARD NOT PROHIBITED
FROM PURCHASING*Dear Sir:*

In your letter of the 1st instant you request my opinion as to whether the State Live Stock Sanitary Board has authority to purchase a motor truck to be by it used in the performance of its official duties.

In an opinion of this Department dated December 31, 1929, it was stated:

"In my opinion, the prohibition of Chapter 13810, Acts of 1929, is against the purchase of motor vehicles by any State officer or employee and is not directed against the purchase of motor vehicles by separate departments of the State government, such as the State Road Department, Board of Commissioners of State Institutions, and other boards and commissions consisting of more than one officer. * * * The evil which led to the enactment of this law was the practice of certain individual officers and employees of the State in using blanket appropriations made to their departments for the purpose of purchasing motor vehicles and was not intended to operate against the actions of official boards as distinguished from individuals."

The prohibition of Chapter 13810, Acts of 1929, Section 1, is against the purchase of motor vehicles by any State officer or employee for the use of himself or another. There is no prohibition against the purchase of motor vehicles by a State department or board for its use as a governmental agency as distinguished from the use of a State officer or employee.

I am therefore of the opinion that the State Live Stock Sanitary Board may within its discretion purchase such motor vehicle as may be needed by it in the performance of its statutory duties, and pay the same out of any funds which are available for expenditure by the said department, as provided by law.

SECTION 9

NATIONAL GUARD

October 30, 1934.

SHALL HAVE FREE PASSAGE OVER FERRIES AND BRIDGES

Dear Sir:

Replying to your letter of the 23rd instant, I call your attention to Section 2752 of the Compiled General Laws of Florida 1927, which exempts the militia of the State of Florida, when actually going or returning from musters or other military services, from paying toll at any of the ferries and bridges in this State.

This Act was in force long prior to the franchise authorizing the construction and operation of Gandy Bridge.

November 6, 1934.

ACCIDENTS INVOLVING LIFE AND PROPERTY FROM OPERATIONS
OF MOTOR VEHICLES IS NOT A STATE LIABILITY*Dear Sir:*

I am in receipt of your letter of the 2nd instant, advising that the Florida National Guard has been motorized and as a result a large number of motor trucks are being operated by the National Guard on the public highways and that inevitably there will be accidents involving the life and property of private individuals. You make inquiry as to whether or not there is any provision in the State law whereby claims for damages to private property, etc., may be paid from State funds.

In reply I beg to say that I know of no statute providing for the payment of claims by the State for damages involving the life and property of private individuals. I beg to advise further there is no statute providing for the State to be sued. In this situation such claims can not be paid by the State except upon the passage of a Special Relief Act by the Legislature, in each instance.

For your further information I will say that some of the Departments of the State in addition to fire and theft insurance policies on motor vehicles operated also take out liability insurance, and I am advised that some of the companies attach to such policies what is termed a rider, which provides that private individuals may bring suit against the insurance company without making the State of Florida party defendant.

SECTION 10

NEPOTISM

June 8, 1933.

INAPPLICABLE TO COUNTY OFFICER'S FATHER'S HALF
BROTHER'S CHILD

Dear Sir:

House Bill 178, Chapter 16088, Acts 1933, Session of 1933, which has become a law, prohibits the employment of persons related within the fourth degree, either by consanguinity or affinity. Your question is:

"Would a county officer's father's half-brother's Daughter's child come within the meaning of House Bill No. 178?"

It is my opinion that under this set-up of facts, the child would be related to the officer in the fifth degree, and hence, not within the prohibition of the Act.

June 8, 1933.

PENALTY FOR VIOLATION

Dear Sir:

This refers to your favor of June 3, relative to the recent act of the Legislature, known as House Bill No. 178, Chapter 16088, Acts 1933, or commonly spoken of as the Nepotism Bill.

This Act provides "that any State Officer, member of State Board, County Officer, member of County Board or Commission, City Official, or his appointee, who shall knowingly employ, either directly or indirectly, any person related within the fourth degree, either by consanguinity or by affinity, to such State Officer, member of State Board, County Officer, member of County Board or Commission, City Official, or his appointee, shall be deemed guilty of misfeasance and malfeasance in office and subject to removal therefor. Provided, however, that the provisions of this Act shall not apply to officers above who employ only one person related to him as above set out."

I think you will see that the Act is fairly clear, and the relationship prohibited is relationship of the employee to the officer employing him. It is not a question of relationship of one employee to another.

June 10, 1933.

EMPLOYMENT UNDER CONTRACT NOT AFFECTED BY LAW

Dear Sir:

Replying to your letter with reference to House Bill No. 121, Chapter 16183, Acts 1933, I would say that if the head of the Escambia County

Health Unit was employed under contract for a definite period that this law would not affect his employment until and when his contract is renewed.

Section 1 of this law provides:

"From and after the passage of this Act all persons employed to work for the State of Florida or for any county of the State, shall be bona fide residents of the State for two years next prior to such employment, except only where after due diligence no person can be found in the State possessing the required qualifications necessary to the particular employment."

As above stated, it is my interpretation of the law that employment under contract for a definite period before the passage of the act will not be affected thereby.

June 13, 1933.

LAW APPLIES TO SCHOOL TEACHERS

Dear Sir:

The Act recently passed fixing residential qualifications of persons to be employed by the State and Counties, etc., does apply to the employment of school teachers and other persons to be employed by Boards of Public Instruction.

A bona fide resident of the State, in my opinion, is a person who has had his domicile in this State for two years immediately preceding employment.

It unquestionably becomes the duty of all Boards of Public Instruction to make every reasonable effort to ascertain if the persons they employ have been residents of Florida two years immediately preceding employment by any such Board.

June 15, 1933.

MAY EMPLOY A MAN WHO IS A SON OF WIFE'S FATHER'S HALF
SISTER

Dear Sir:

I beg to reply that in my opinion you may employ this party because, as I figure it, under these facts, he would stand in relationship to you within the fifth degree, and the prohibition of the law is within the fourth degree. But, in addition to this, the law permits you to hire one person who is related to you within the prohibited degree.

June 16, 1933.

DOMICILE, HOW ESTABLISHED

Dear Sir:

This refers to your favor of June 15, relative to the act requiring residential qualifications of persons working for the State, County, etc.

NEPOTISM

It is my opinion that "bona fide resident" means a person who has his legal residence and home or domicile in the State of Florida. One of the best evidences of domicile is registration and voting, but, of course, this is not the exclusive evidence. One might never vote, yet he would still have a permanent home or domicile somewhere. It is my opinion that all persons seeking employment at the hands of the State or County, etc., must have had their bona fide home and domicile in the State of Florida continuously for two years prior to the date of employment.

Everyone must have, under our theory of government, a legal or permanent home, and it is this legal or permanent home that constitutes a bona fide residence under this law.

June 16, 1933.

PROHIBITS RELATIONSHIP WITHIN THE FOURTH DEGREE WITH
THE PARTY EMPLOYING SUCH PERSON

Dear Sir:

The Nepotism bill prohibits relationship within the fourth degree with the party employing such person.

The law gives one exception. In other words, a party employing people may employ one person who is within the prohibited fourth degree of relationship. The relationship prohibited is between the employer and employee and not between the employees.

June 19, 1933.

MARRIED WOMAN RELATED IN SECOND DEGREE TO HUSBAND'S
SISTER'S HUSBAND

Dear Sir:

I am in receipt of your letter of June 16, which I presume refers to House Bill No. 178, of the 1933 Legislature, (Chapter 16088). You state that Sheriff _____ married your husband's sister and inquire what relationship you hold to the Sheriff.

In reply, I beg to say that your relationship would be of the second degree by affinity.

Affinity is a connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same reciprocal connection with the relations of the husband.

The Statute above mentioned makes no reference to heads of families. Your attention is called to the following provisions in Section 1 of said Statute:

"Provided, however, that the provisions of this Act shall not apply to officers who employ only one person related to him as set out."

NEPOTISM

June 20, 1933.

CIVIL RULE USED IN ARRIVING AT DEGREE OF RELATIONSHIP

Dear Sir:

I am in receipt of your letter of the 17th instant, making inquiry as to the method used in arriving at the fourth degree of relationship under House Bill 178, Chapter 16088, Acts 1933 of the 1933 Legislature.

In reply I beg to refer you to 18 Corpus Juris 823, Descent and Distribution, 27 and 28. There are two methods, one called the canon or common law rule, and the other called the civil rule. The canon or common law rule appears to apply only to descent and distribution with reference to real property, and would of course have no bearing on the above statute.

My method of computing the relationship under House Bill 178 is according to the civil rule, which is to begin with one party and ascend from him to a common ancestor, and then descend from that common ancestor to the other party, reckoning a degree for each generation as well in the ascending as in the descending line.

According to this method a first cousin would be within the fourth degree, and a second cousin would be within the fifth degree.

June 22, 1933.

STATE AND COUNTY OFFICERS PROHIBITED FROM EMPLOYING
RELATIVES WITHIN 4TH DEGREE*Dear Sir:*

I am in receipt of your letter of June 20, making inquiry with reference to the Nepotism Act of the 1933 Legislature, the same being House Bill No. 178, Chapter 16088, Acts 1933.

I beg to advise that this Statute prohibits State and County officers, State and County boards and City officials from employing any person related within the fourth degree, either by consanguinity or by affinity, to such officer or board member.

Relation by consanguinity means blood relation. Relation by affinity means relation by marriage.

Affinity is a connection formed by marriage which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same reciprocal connections with the relations of the husband.

Our method of computing degree of relationship under the said act is according to the civil law rule, which is to begin with one party and ascend from him to a common ancestor and then descend from that common ancestor to the other party, reckoning a degree for each generation, as well in the ascending as in the descending line.

According to this method of computing the relationship, an officer and his father would be within the first degree; an officer and his brother

NEPOTISM

would be within the second degree; an officer and his nephew or his niece would be within the third degree; an officer and his first cousin would be within the fourth degree; an officer and his second and third cousin would be within the fifth and sixth degree, respectively.

Under said method of computing relationship, an officer's wife's sister's husband's brother would not be related to such officer, either by consanguinity or affinity.

In my opinion a Board, under the provisions of said act, is not authorized to employ a relative of each member of the Board, but may employ only one person related to any member of the Board.

In my opinion said Act does not apply to employment before the effective date of said Statute, if such employment were by contract for definite terms or periods. The same will apply, however, at the expiration of such term. The bill applies where employments are made from day to day.

June 22, 1933

HUSBANDS QUALIFICATION DOES NOT QUALIFY WIFE

Dear Sir:

I am in receipt of your letter of June 16, making inquiry with reference to House Bill No. 121, (Chapter 16183-1933) of the 1933 Legislature, which prohibits officers or boards from employing any person to work for the State, County or City, who has not been a bona fida resident of the State of Florida for the last past two years at the time of such employment. You ask if this law would apply to a wife who has resided in the State for less than two years, when her husband has been a lifelong resident of Florida.

I beg to advise that in my opinion the law would apply in such cases, and such an applicant could not be employed under provisions of said Statute.

June 23, 1933.

COUNTY SUPERINTENDENTS AND TRUSTEES NOT PROHIBITED
FROM RECOMMENDING RELATIVES AS SCHOOL
TEACHERS UNDER LAW

Dear Sir:

I have your favor of June 20th, relative to the Nepotism Act of the 1933 Legislature, being House Bill No. 178, (Chapter 16088).

I beg to say that Boards of Public Instruction, and not County Superintendents of Public Instruction, employ teachers. Relatives of the Superintendent may be employed by the Board when they are not related to a Board member.

The Board is considered as one entity, and a relative of one member of a board may not be employed by other members of the Board contrary to said Act.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
NEPOTISM

The statute does not prevent Trustees from recommending their relatives for positions as teachers and does not prevent the Board from employing such relatives of Trustees, provided they are not also related to a Board member.

June 26, 1933

INEFFECTIVE TO EMPLOYMENT UNDER CONTRACT MADE PRIOR
TO EFFECTIVE DATE OF ACT

Dear Sir:

It is my opinion that where a board or officer had authority to employ someone for a definite period of time, and a definite, valid and binding contract for a definite period has been signed and executed by both parties before the Nepotism law became effective or before the Residential qualification law became effective, these laws would not interfere with such a contract. However, the mere fact that a person has been employed from day to day and month to month without a definite contract, this would not permit employment, if such person were prohibited from employment by these laws.

June 28, 1933

INAPPLICABLE TO APPLICANT WHOSE GREAT-GRANDMOTHER
WAS ALSO AUNT OF MEMBER BOARD OF PUBLIC INSTRUCTION

Dear Sir:

I have your letter of the 27th, in which you state that your great-grandmother was the aunt of one member of the Board of Public Instruction, and making inquiry as to your relation to the Board member.

In reply, I beg to say that your relationship to the Board member as above stated is not within the fourth degree and if not otherwise related your employment would not be prohibited by the 1933 Nepotism Act, House Bill No. 178, Chapter 16088, Acts 1933.

June 29, 1933

APPLICABLE TO PUBLIC EMPLOYEE'S WIFE'S HALF SISTER'S SON

Dear Sir:

This refers to your favor of June 27, in which you ask the relationship of your wife's half-sister's son.

I beg to advise that in my opinion your wife's half-sister's son stands within the third degree of relationship to you, and would be within the prohibited degree under the Nepotism Law.

NEPOTISM

June 29, 1933

APPLICABLE TO FEE OFFICERS AND THEIR EMPLOYEES

Dear Sir:

This refers to your favor of June 28, relative to the Nepotism Law.

I beg to reply that it is my opinion the Nepotism Laws does apply to all fee officers and their employees, as well as salaried officers and their employees.

July 5, 1933

**CIVIL LAW METHOD USED IN COMPUTING DEGREES
OF RELATIONSHIP**

Dear Sir:

This refers to your favor of June 30. I beg to advise that I have heretofore ruled that in computing the degrees of relationship under the Nepotism Act, we should use the civil law method. The common law method is only used with reference to computing relationship with reference to the law of descent.

You have worked out the proper method, that is, with the civil law you start with the officer and go back to the common ancestor and go down to the person in question, counting each person one degree.

With reference to your step-mother, I think your position is correct: that your father being dead, the relationship of consanguinity is broken.

July 27, 1933

**INEFFECTIVE AS TO WIFE OF HALF UNCLE BY MARRIAGE
PREVIOUSLY DECEASED OF SCHOOL BOARD
MEMBER'S WIFE**

Dear Sir:

This is in response to your verbal request for my opinion as to whether or not your school board can hire the wife of a half-uncle by marriage of your wife, and the relationship by marriage having been dissolved about twenty years ago when the half-uncle died.

This relationship existed only by virtue of the marriage of relationship by affinity and this relationship was broken when the half-uncle died; therefore, this lady is no longer any kin of yours within the law, and there is no relationship that would bar the county school board from employing her.

February 9, 1934

COUNTY OFFICERS LIMITED TO EMPLOYMENT OF ONE RELATIVE
UNDER LAW EVEN THOUGH UNSALARIED

Dear Sir:

I am in receipt of your letter of the 6th instant making inquiry if, under the provisions of Chapter 16088, Acts of 1933, limiting County Officers to the employment of only one relative, a County officer may employ his half brother's wife when the officer's wife works in the office only a few days in each month and draws no salary.

In reply I beg to say, while an employment ordinarily contemplates remuneration for services the payment of wages or salary is not an essential element of an employment. See 18 R. C. L. 495, Master and Servant, 4.

Furthermore, the above mentioned Act appears to be designed to favor employments in public offices of the general public rather than of the relatives of public officers. The employment of relatives, even without compensation, may have the effect of keeping others out of employment for pay and thereby defeat the purpose of the Act.

In my opinion a County Officer already employing his wife, even without salary or wages, would not, under the provisions of Chapter 16088, Acts of 1933, be authorized to employ another relative.

April 14, 1934

PROHIBITS EMPLOYMENT OF MORE THAN ONE RELATIVE OF
BOARD AS A WHOLE

Dear Sir:

I am in receipt of your letter of the 13th instant, advising that the Franklin County Board of Public Instruction, of which you are a member, has been cited to the Governor for an alleged violation of the Nepotism Law inasmuch as you have a brother who is a bus driver and the Chairman has a brother-in-law holding the position of janitor. While not directly requested, I assume that the purpose of your letter is to secure my opinion on the Nepotism Act, Chapter 16088, Laws of Florida, Acts of 1933, the first two Sections of which read as follows:

"Section 1. That any State Officer, member of State Board, County Officer, member of County Board or Commission, City Official, or his appointee, who shall knowingly employ, either directly or indirectly, any person related within the fourth degree either by consanguinity or by affinity, to such State Officer, member of State Board, County Officer, member of County Board or Commission, City Official, or his appointee, shall be deemed guilty of misfeasance and malfeasance in office and subject to removal therefor. Provided, however, that the provisions of this Act shall not apply to officers above who employ only one person related to him as above set out.

NEPOTISM

"Section 2. That any State Officer, member of State Board, County Officer, member of County Board or Commission, City Official, or his appointee, violating the provisions of Section One of this Act shall forfeit all compensation salary, fees or emoluments of such office during the time that such State Officer, member of State Board, County Officer, member of County Board or Commission, City Official or his appointee violates the provision of this Act."

You will note that the above statute prohibits the employment, directly or indirectly, of relatives either by consanguinity or by affinity and extends to the fourth degree. A brother is a relative by consanguinity in the second degree. A brother-in-law, who is a brother of an officer's wife, is related to such officer in the second degree by affinity because affinity is a connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relatives of the wife as that in which she herself stands toward them.

You will note that the language of the above Act applies to Boards as well as individual officers and also applies to the employment of any person regardless of the position in which he may be employed.

The Supreme Court of Florida, in an opinion reported in 149 So. page 638, holds that the provisions of said Act do not apply to school teachers for the reason that other statutes prescribe the qualifications of teachers and that such statutes do not appear to be repealed by Chapter 16088. Said opinion does not undertake to construe Chapter 16088 with reference to any other employee and, until our Supreme Court shall have passed upon the Act with reference to other employees, it is incumbent upon administrative officers, both State and county, to administer the statute as it appears on the statute books.

In my opinion Chapter 16088 prohibits all State and county officers from employing more than one relative within the fourth degree, either by consanguinity or affinity, and also prohibits all State and county boards from so employing more than one such relative to any member of the board. Since employees of boards are employed by the Board as a unit and are not employed by individual members of boards, it is my opinion that the statute does not permit the employment of a relative from each member of the board, but only permits one relative of any member.

The above opinion has been my holding since the effective date of said statute, and all opinions on this subject going out from this office have been in line with such holding.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
NEPOTISM

July 30, 1934

DEGREE OF KINSHIP DEFINED

Dear Sir:

I am in receipt of your letter of the 26th instant, relative to the Nepotism Act, Chapter 16088 of 1933 and answering your inquiry I beg to say that an officer and his son are related in the first degree by blood or consanguinity. An officer is related to his wife's sister's husband in the second degree by affinity. An officer is not related to his son's wife's sister's husband by blood or affinity.

SECTION 11

NEWSPAPERS

April 24, 1933.

STATE WIDE PUBLICATION MEANS CIRCULATION IN
PRACTICALLY EVERY COUNTY IN STATE*Dear Sir:*

I am in receipt of your letter of the 21st instant, with reference to Section 1803, Compiled General Laws of Florida, 1927. You make inquiry as to what constitutes a newspaper of state-wide circulation and whether one notice is sufficient to meet the requirements of the 60 day period mentioned in said Section.

In reply I beg to say that in my opinion a newspaper of state-wide circulation is one that has such well known wide circulation as to be presumed that the same circulates in every county of the State. With reference to the 60 days' notice by publication after cancellation of lease, the statute does not appear to require published notice for each of the 60 days but one notice at the beginning of the 60 days would appear to be sufficient.

October 19, 1934.

WHEN ENTITLED TO PUBLISH LEGAL NOTICES AFTER CHANGE
OF NAME AND OWNERSHIP*Dear Sir:*

In your letter of the 16th instant, you propound the following inquiry:

A. A weekly newspaper, published in a small town, fails to continue. Parties in another town in the same county buy the plant of the failed paper, start up another weekly, under another name, in another town, and at the masthead claim to be 'successor.'

B. Is the new weekly called 'successor' entitled to receive, publish and be paid for legal notices, public or private, until they have been established for one year as required by law in the case of a new publication?

The answer depends upon the particular facts in connection with the operation of such paper. If the original paper suspended operations entirely, and only the plant was taken over by other parties or another paper already in operation, then it could hardly be said that the original paper referred to had continued its publication. However, if the management of the paper fails and the same is taken over by other parties and the operations continued, although in a different locality in the same county, the publication may be said to be continuous.

SECTION 12

NOTARY PUBLICS

February 9, 1933.

MINOR NOT AUTHORIZED TO HOLD OFFICE

Dear Sir:

Replying to your favor of the 7th., instant, permit me to say that under the provisions of Section 15 of Article XVI of the Constitution of the State of Florida, Notaries Public are recognized by the Constitution as being State officers. The provisions of the statute for the removal of disability of non-age of minors has reference to the removal of contractual disability and not political disability of such minors. Therefore, the fact that the minor has had the disability of non-age removed by Court order would not permit such minor to act as Notary Public or to legally hold any other office of a political nature.

February 16, 1933.

PROCEDURE WHEN FEMME SOLE BECOMES FEMME COVERT
PRIOR TO EXPIRATION OF HER COMMISSION AS SUCH*Dear Sir:*

Replying to your letter of February 9, permit me to say where a femme sole is issued a commission as a notary public and before the expiration of her commission she becomes a femme covert, she should continue to act in the same name in which her commission was issued, or she should surrender her commission and be recommissioned in her married name; however, where a married woman, as a notay public, signs in the name in which the commission was issued and adds her husband's surname in parenthesis, it would not, in my opinion, invalidate the instrument so notarized.

June 4, 1934.

NO ADDITIONAL FEE FOR WRITING LICENSES IN OFFICE OF TAX
COLLECTOR*Dear Sir:*

I am in receipt of your letter of the 31st ut., making the following inquiry:

"Don't you believe a man who writes licenses is entitled to the notary fees?"

You failed to state the kind of licenses to which you have reference. I do not know of any requirement for the Tax Collector or his deputies to be Notaries Public.

NOTARY PUBLICS

If you have reference to Motor Vehicle Licenses I refer you to Section 1281, Compiled General Laws of Florida, 1927, as amended by Section 1, Chapter 16085, Laws of Florida, Acts of 1933. This Section contains the following:

"There shall be a service charge of 25¢ for each application which is handled, which service charge shall be collected from the applicant as full compensation for all services rendered in connection with the handling of the application. Said fee shall be retained by the Tax Collector as other fees accruing to the Tax Collector's office."

"No Tax Collector, Deputy Tax Collector or employee of the State or any County shall charge, collect or receive any fee or compensation as Notary Public or otherwise for any service in connection with the execution of any notarial certificate to any application for license, application for title, registration, change of title or for other service incidental to the issuance of license tags."

For your further information I quote you the following headnote from the opinion of our Supreme Court in the case of Rawls, et al. vs. State ex rel. Nolan, 98 Fla. 103, 122 So. 222:

"Public officers have no legal claim for official services rendered, except when, and to the extent that, compensation is provided by law, and when no compensation is so provided rendition of such service is deemed to be gratuitous."

August 8, 1934.

RESIDENT ALIENS NOT QUALIFIED FOR APPOINTMENT

Dear Sir:

I am in receipt of your letter of the 6th instant, making inquiry if there is any statutory or common law requirement in Florida that disqualifies a resident alien from being appointed and functioning as a Notary Public in this State.

In reply I beg to say that I do not find any statute which would prohibit a resident alien from being appointed and functioning as a Notary Public in this State. However, your attention is called to the fact that under our State Constitution and our statutes a Notary Public is recognized as an officer. Your attention is further called to 6. R. C. L. 801, Aliens 8, containing the following language as to the eligibility of aliens to public office:

"At the very foundation of all independent popular governments lie the principles, the enforcement of which needs the aid of neither statutory nor constitutional enactments or restrictions, that the government is instituted by the citizens, and that it is to

NOTARY PUBLICS

be administered, and its powers and functions exercised, only by them and through their agency. Viewed in the light of these principles it is obvious that an alien is ineligible to hold public office unless specially authorized by statute. So if a person who is not an elector because an alien attempts to exercise the functions of a public office, the courts, on proper proceedings being instituted for the purpose, will oust him."

In view of the above and in view of the absence of any specific statutory authority for the same, it is my opinion that a resident alien is not qualified to be appointed and to function as a Notary Public in this State.

SECTION 13
PENSIONS

May 18, 1933.

COMPTROLLER HAS AUTHORITY TO REVOKE

Dear Sir:

Replying to your letter of May 10th, permit me to say Section 2103, Compiled General Laws of 1927, contains the following provision:

"Provided, further, that upon any pensioner being incarcerated or confined in any State institution in this State, the payment of any pension shall be discontinued during such time of confinement, unless such pensioner has a wife or minor children dependent upon him or her for support, when such pension shall be paid to those so dependent upon such pensioner."

This appears to be sufficient legal authority to sustain the State Comptroller in revoking the pension of the party referred to in your letter.

June 1, 1934.

RELIEF ACT—EFFECT OF DEATH OF BENEFICIARY UNDER
RELIEF ACT

Dear Sir:

This is in response to your communication of May 25th, wherein you ask whether or not upon the death of the sole beneficiary named in the relief act of Annie A. Browning, Chapter 16151, Acts of 1933, you are authorized to draw your warrant payable to the estate of the deceased.

This Act appropriated the sum of \$5,000, payable to the beneficiary named; \$1,000 at the outset and \$100 a month until the \$5,000 should be paid. The only authorization of drawing your warrant is to the named beneficiary.

We must construe this Act as a gift or donation by the State, and as depending entirely upon the generosity of the government.

In such event a claim of this character cannot be assigned, neither does it go to the administrator as assets, nor does it descend to the heir.

It is my opinion, therefore, that the balance due under the above Act has lapsed, and no further sums are payable.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
PENSIONS

September 7, 1934.

BALANCE DUE AT DEATH OF PENSIONER

Dear Sir:

I am in receipt of your letter of the 5th instant, relative to balance due pensioner at date of death. You make inquiry as to who is entitled to receive the amount of pension accrued from the date of last payment to the date of death of the pensioner. You make special inquiry if the widow alone, or the legal heirs, the widow sharing therein, should receive same.

In reply I beg to say that the pension statutes do not make provisions for payment to any one of any balance due a pensioner. Furthermore, appropriations in Pension Act must be construed as gifts or donations by the State and such Acts are dependent upon the generosity of the government. In this situation, a claim for pensions can not be assigned, neither does it go to the Administrator as assets nor does it descend to the heirs.

It is my opinion, therefore, that any balance of pension due to deceased pensioner, since the last monthly payment, has lapsed and no further sums are payable to any one.

September 11, 1934.

DEATH OF PENSIONER WHERE NO ONE IS LEFT TO SUCCEED TO
PENSION, ABATES IT

Dear Sir:

This refers to my opinion under date of September 7, 1934, with reference to the above subject and which reads as follows: (See next page for opinion), and is to advise you that this opinion is intended to supersede all prior opinions on the subject, and particularly, my opinion under date of March 29, 1933.

You will note, however, that the opinion of September 7th applies solely to the situation where the pensioner dies without leaving anyone who is by the statute itself entitled to succeed to his pension; in the event he leaves a widow who by the statute is entitled to succeed to such pension, then the opinion of my predecessor under date of May 4, 1929, applies.

PENSIONS

October 15, 1934.

RESERVE COMPANIES—HOME GUARD. ELIGIBLE FOR PENSIONS

Dear Sir:

I am in receipt of your letter of the 8th inst., making inquiry if members of *reserve companies* of other States or members of *home guard* companies of other States are eligible for a pension as a Confederate soldier in Florida.

Answering your inquiry with reference to members of home guard companies of other States, I refer you to Section 1, Chapter 14735, Laws of Florida, Acts of 1931, now Section 2102 (1), Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"Soldiers of organizations known as Home Guards of other States in the War Between the States shall not be eligible to a pension under the laws of this State; Provided, this section shall not affect the pension of any soldier or the widow of any soldier on the pension roll of this State May 28, 1931: Provided, this section shall not apply to those who are eighty years of age and have resided continuously in the State of Florida for sixty years prior to May 28, 1931."

With reference to members of *reserve companies* I beg to say that I am not advised as to the definition or meaning of *reserve companies*. If they were the same as home guards, the above quoted statutes would apply. If they were the same as the Militia of a Confederate state, as mentioned in Section 2098, Compiled General Laws of Florida, 1927, said Section would apply.

In this situation may I suggest that it might be well to inquire of the Federal authorities and the several Southern Confederate States just what were reserve companies in such States, respectively, if any. If you are already advised as to the definition or meaning of *reserve companies* in the several Confederate States and will give me the benefit of such information, I shall be glad to advise you further as to your inquiry.

SECTION 14

PUBLIC RECORDS

March 15, 1933.

ANY CITIZEN AUTHORIZED TO INSPECT

Dear Sir:

Under the provisions of Section 490 et seq. of the Compiled General Laws of Florida, 1927, the public records of the county are open to inspection by any citizen of the State, who may make copies thereof in all instances wherein he has a special interest. This does not, however, authorize a general audit of the county records, except as provided by law.

Any citizen of the State has the right to request an audit of the county records by the State Auditing Department, but there is no authority in law for any citizen to make a general audit of the public records of the county or cause the same to be made in any other manner than that provided by law.

This does not, however, prevent an inspection of the public records by any citizen of the State, and on the other hand, any citizen has a perfect right to inspect the public records of the county at any time he so desires during office hours and in the office where the records are kept.

April 21, 1933.

PUBLIC OFFICIALS SHOULD FURNISH CERTIFIED COPIES OF THEIR RECORDS TO U. S. VETERANS' BUREAU, WITHOUT COST

Dear Sir:

Replying to yours of April 19th, permit me to say under the provisions of Section 14 of Chapter 14579, Acts of 1929, whenever any public record is required by the U. S. Veterans' Bureau to be used in determining the eligibility of any person to participate in benefits made available by such Bureau, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf or the representative of such Bureau, with a certified copy of such record.

The provision stated above not only applies to the State Board of Health but to all officials charged with the custody of public records.

PUBLIC RECORDS

June 19, 1934.

PUBLIC ENTITLED TO OBTAIN INFORMATION—CHARGE
NOT AUTHORIZED*Dear Sir:*

This refers to your favor of June 18. In reply I beg to advise that all of your records are public records and as such the public has a right to obtain the information contained in these records.

However, the public is only entitled to obtain this information under such reasonable rules and regulations as are required by the Motor Vehicle Department. These rules and regulations must be reasonable, considering the interest of the Department as well as the public.

I think the practice that all who desire information from the records of your department be set forth in writing to the Motor Vehicle Department and it be supplied within a reasonable time is a reasonable and proper regulation.

I do not believe that the public is entitled to go through your records as they might wish, as you are the custodian of the records for the State, but, under reasonable rules and regulations, the public does have a right to obtain the information contained in your records.

It is my opinion that there is no law authorizing a charge to be made for the service of permitting the public to obtain information from your office.

SECTION 15

SECURITIES ACT (Blue Sky)

March 21, 1933.

FEE MAY BE RETURNED WHEN NO FORMAL APPLICATION FILED

Dear Sir:

This refers to your favor of March 14, in which you state that you have a case where a party sent a check for \$25.00 with request for formal application blank. Later, this party decided not to qualify and has never sent in the forms properly filled out with exhibits, etc. The party now asks for the return of his money.

I note that you have issued this party a receipt for this money and have given him a file number, yet we do not have formal application for consideration of the Commission.

Under these facts, it is my opinion that you should return the \$25.00 if he makes affidavit that he has had no business transactions that would come under Chapter 14899, Acts of 1931, which would subject him to qualifying, and upon the return of your receipt.

You understand, of course, that this statement of facts is different from the statement of facts set up by the Honorable Ernest Amos, Comptroller, under date of July 16, 1932. My opinion to the Honorable Ernest Amos, Comptroller, under date of July 16, 1932, was based upon a case where a formal application was filed and sent on to the Commission for consideration. Under such circumstances the fee should not be returned.

October 26, 1933

SALE OF OIL OR MINERAL ROYALTIES UNDER CERTAIN CONDITIONS NOT WITHIN OPERATION OF THIS ACT

Dear Sir:

I am in receipt of your communication of October 23rd, asking for my opinion as to whether the sale of oil or mineral royalties, which are in fact ownerships to real estate, come within the operation of the Sale of Securities Act, being Chapter 14899, Acts of 1931.

I understand from your communication that oil or mineral royalties are an actual deed to the deposit contained in specified real estate, that the same do not constitute an oil, gas or mining lease, but rather an outright conveyance of the oil or mineral right itself; and that such sale does not amount to a right to participate in an oil, gas or mining lease.

The said Securities Act of 1931 defines a security as including, among others, a "certificate of interest in an oil, gas or mining lease, * * *."

SECURITIES ACT (BLUE SKY)

In the light of the above facts and the definition of a security as contained in the said Act of 1931, it is my opinion that the sale of such royalties by outright deed of conveyance does not come within the operation of the said Securities Act.

January 15, 1934

SALE OF INTERIM OR TEMPORARY CERTIFICATE UNDER
SUPERVISION OF

Dear Sir:

This acknowledges receipt of your letter of January 12, 1934, in which you inquire whether the sale of an interim certificate issued prior to organization of a corporation and capital stock issued therefor, come under the supervision of the Florida Securities Commission.

Under Chapter 14899, Acts of 1931, "security" includes "pre-organization certificate, pre-organization subscription, * * *; including an interim or temporary * * * certificate, or receipt for a security or for subscription to a security."

Under Section 5(i) it is provided that "subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof under the laws of this State, when no expense is incurred, or no commission, compensation or remuneration is paid or given for or in connection with the sale or disposition of such securities," are exempt transactions.

It is my opinion that the Act intended to distinguish between a mere subscription and an interim certificate given therefor. It is, therefore, my opinion that the sale of these interim certificates, as well as the capital stock issued therefor, are both under the supervision of the Florida Securities Commission, and subject to the terms of said Act.

March 23, 1934

SALE OF RESERVED INTEREST IN GAS OR OIL LEASE DEFINED AS
AN EXEMPT TRANSACTION

Dear Sir:

I am in receipt of your letter of the 22nd instant, in which you make inquiry if the owner of 1-8 reserved interest in a gas and oil lease may sell $\frac{1}{2}$ of such reserved interest without coming in conflict with the provisions of the Securities Act, Chapter 14899 of 1931. You call attention to the definition of the word "security" in Section 1 of said Act in which it is recited that "security" shall include among other things "certificate of interest in an oil, gas or mining lease."

In my opinion it is very doubtful if the sale by the owner of a reserved interest in a gas and oil lease, as above mentioned, would come within the terms of the above definition. But regardless of whether or

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SECURITIES ACT (BLUE SKY)

not it does come within such terms, it would appear to be an exempt transaction under the provisions of paragraph (c) of Section 5 of said Act, which exempts an isolated transaction by the owner.

March 26, 1934

WHOLE INTEREST IN GAS AND OIL LEASE EXEMPT

Dear Sir:

I am in receipt of your letter of the 24th inst., following your letter of the 22nd inst., relative to the Securities Act, Chapter 14899 of 1931.

Your first letter was answered on the 23rd inst., and I assume sufficiently answers your later letter on the same subject. I may add, however, that my opinion would apply to the sale of the whole as well as a half interest in a reserved interest in a gas and oil lease provided it is an isolated transaction by the owner.

April 3, 1934.

PERSON PURCHASING LARGE BLOCK OF SECURITIES FOR
PURPOSE OF RESALE MUST QUALIFY

Dear Sir:

This acknowledges receipt of your communication of March 31, 1934, in which you inquire whether or not a party who purchases a large block of stock for the purpose of selling it and offering it for sale to the public generally, must qualify as a dealer under Chapter 14899, Acts of 1931, commonly known as the Securities Act.

Paragraph 4 of Section 1 of said Act defines a dealer as including:

"Every person other than a salesman who in this State engages either for all or part of his time directly or through an agent in the business of selling any securities issued by another person *or purchasing or otherwise acquiring such securities from another for the purpose of reselling them or of offering them for sale to the public*, or offering, buying, selling, or otherwise dealing or trading in securities as agent or *principal* for a commission, or at a profit * * *."

Paragraph (c) of Section 5 of said Act exempts isolated transactions and defines such transaction as one not made "in the course of repeated and successive transactions of a like character by such owner, etc. * * *."

It is, therefore, my opinion that under this Act such person as has been described above must qualify as a dealer.

SECURITIES ACT (BLUE SKY)

April 20, 1934.

TAX COLLECTING AGENCY SHOULD QUALIFY WHEN BUYING AND
SELLING BONDS THOUGH ONLY FOR PAYMENT OF TAXES*Dear Sir:*

It is my opinion that where an individual firm, partnership or corporation has qualified under the Florida Securities Commission as a bond broker, and such parties desire to engage in the payment of taxes and special assessments, as defined under the acts of 1927, it is necessary for such parties to qualify under the acts of 1927.

Where parties qualify under the acts of 1927, as a tax collecting agency and buy and sell no bonds other than for the payment of such taxes and special assessments, it is my opinion that it is necessary, nevertheless, for such parties to qualify under the Florida Securities Commission Act.

It is my opinion that it is the duty of the city tax collector to ascertain and determine that any tax collection agency doing business with his office be properly qualified as such agency under the acts of 1927; and if not so qualified, that his office should not engage in business with such agency until it is properly qualified.

May 8, 1934.

LOAN, EVIDENCED BY RECEIPT GRANTING PROPORTIONATE
INTEREST IN AN AGREEMENT AND TO BE REPAID FROM
EARNINGS OF TRANSACTION, SUBJECT TO*Dear Sir:*

This is in response to your communication of April 30, 1934, from which I understand the following facts:

Your client has a certain agreement covering exclusive selling or leasing rights for the X Development Corporation production machines and equipment or products. He borrows money from John Doe, and to evidence the loan gives a receipt therefor and grants to him a proportionate interest in such agreement, with the understanding that the loan is to be repaid to the holder of such receipts from the net earnings of the transaction upon surrender of the agreement receipt; the holder of such, however, to retain the said proportionate interest.

From these facts it is my opinion that the agreement receipt given constitutes a certificate of interest in a profit-sharing agreement, and as such, is subject to the provisions of Chapter 14899, Acts of 1931.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SECURITIES ACT (BLUE SKY)

March 30, 1934.

QUALIFICATION NATIONAL BANK AS SECURITIES DEALER

Dear Sir:

This is in further response to your communication of March 16, 1934, with reference to the above subject.

Further consideration of this matter leads me to believe that a State has power to require a national bank to comply with certain reasonable and non-discriminatory regulations, when, in virtue of a power granted by Congress to the national bank, such bank attempts to exercise such power within a State, provided that such regulation does not impair its efficiency or frustrate the purpose for which it was created by Congress.

For your convenience I respectfully refer to the following authorities:

7 C. J., page 760.

3 R. C. L., pages 656, et seq.

National Bank vs. Commonwealth, 9 Wall. 353, 362.

Waite vs. Dowley, 4 Otto 527.

McClellan vs. Chipman, 164 U. S. 347.

First National Bank vs. Fellows, on relation of Union Trust Company, 244 U. S. 416, 426.

First National Bank vs. State of California, 262 U. S. 366, 43 S. Ct. 602, 67 L. Ed. 1030.

First National Bank vs. Missouri, 263 U. S. 640, 44 S. Ct. Rep. 213, 68 L. Ed. 486.

I find nothing inconsistent in my present reaction to this matter with the decisions in McCulloch vs. Maryland and Osborne vs. The Bank, and Davis vs. Elmira Savings Bank, 161 U. S. 275.

Thus in National Bank vs. Commonwealth it was held:

"The agencies of the federal government are only exempted from State legislation, as far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. * * * It is only when the State law incapacitates the banks from discharging their duties to the government that it comes unconstitutional."

And again in First National Bank vs. Fellows:

"Of course, as the general subject of regulating the character of business just referred to is peculiarly within State administrative control, State regulations for the conduct of such business, if not discriminatory or so unreasonable as to justify the conclusion that they necessarily would so operate, would be controlling upon banks chartered by Congress when they came in

SECURITIES ACT (BLUE SKY)

virtue of authority conferred upon them by Congress to exert such particular powers."

And again in *McClellan vs. Chipman*:

"As long since settled in the cases already referred to, the purpose and object of Congress in enacting the National Bank Law was to leave such banks as to their contracts in general under the operation of the State law, and thereby invest them as Federal agencies with local strength, whilst, at the same time, preserving them from *undue* State interference wherever Congress, within the limits of its constitutional authority, has *expressly* so directed, or wherever such State interference frustrates the lawful purpose of Congress or impairs the efficiency of the banks to discharge the duties imposed upon them by the law of the United States." (Emphasis supplied.)

And again in *First National Bank vs. California*:

"These banks are instrumentalities of the Federal government. Their contracts and dealings are subject to the operation of general and undiscriminating State laws which do not conflict with the letter or the general object and purposes of congressional legislation."

And again in *First National Bank vs. Missouri*:

"Nevertheless, national banks are subject to the laws of a State in respect of their affairs, unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as Federal agencies, or conflict with the paramount law of the United States."

I do not construe the Securities Act as a taxing statute, nor the fee required for registration as a tax. It is unquestioned that State banks are subject to the provisions of this Act, and if national banks are not, or cannot be made to be subject thereto, such would obviously work a discrimination against banks chartered under State laws. The Supreme Court of this State has already held that such Act is constitutional, and is a reasonable regulation which the State may impose upon dealers in securities for the protection of the buying and investing public.

Before issuing my final ruling on this matter, I shall appreciate your reaction to this letter, and your views pertaining thereto.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SECURITIES ACT (BLUE SKY)

October 29, 1934.

NOT APPLICABLE WHEN OWNER OF OIL LEASES SELLS OR
ASSIGNS HIS ENTIRE RIGHTS IN AREA COVERED
OR PART THEREOF

Dear Sir:

Answering your inquiry with reference to sale or assignment of oil leases in whole or in parts coming under the Securities Act, Chapter 14899 of 1931, I refer you to Section 1 of said Act, reading in part as follows:

"'Security' shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, or right to subscribe to any of the foregoing, certificates of interest in a profit-sharing agreement, certificate of interest in an oil, gas or mining lease," etc.

Under the above definition of "Securities" I do not think that the purchasers and owner of oil leases is required to qualify under the Securities Act in order to sell or assign the same in whole or in parts where the grantee in each instance is granted all of the grantors' rights in the area covered. This opinion is based on the assumption that such sales or assignments are bona fide and not evasions of the Securities Act relative to certificates of interest in oil, gas or mining leases.

Any sales of certificates of interest in oil, gas or mining leases, such as separate sales of fractional joint interests to various and sundry parties covering the same area, would, in my opinion, come under the Securities Act.

November 28, 1934.

BONDS DEALING IN SECURITIES AS DEFINED THEREIN,
SHOULD QUALIFY

Dear Sir:

Replying to your letter of the 26th instant, I beg to advise that I have heretofore held and do now hold that every bank, national and/or State, engaged in the business of dealing in securities as defined in Chapter 14899, Laws of Florida, Acts of 1931, should qualify by registering as a dealer in the office of the Florida Securities Commission, pursuant to and as required by said Chapter 14899.

SECTION 16

SLOT MACHINES

June 19, 1934.

WHEN UNLAWFUL TO OPERATE; SEARCH AND SEIZURE

Dear Sir:

I am in receipt of your letter of the 18th instant, making inquiry with reference to the arrest of operators of vending and slot machines.

Chapter 14491, Laws of Florida, Acts of 1929, in Section 19 (e) fixes the State license tax on vending machines at \$15.00 and the County license tax in addition thereto at \$7.50 plus the fees of the officer issuing such license. This same Section provides, however, that it shall not apply to any machine unlawful to operate.

The Constitution and laws of this State prohibit the operation of any kind of a slot machine which contains an element of chance in its operation, but it is not against the law to operate slot machines which are purely vending devices for merchandise, such as chewing gum and the like. When, however, any element of chance is introduced into such a machine, it is against the Florida law.

Sections 7664 and 7665, Compiled General Laws of Florida, 1927, provide for search and seizure of gambling devices. I would suggest, however, that it would be better to proceed under warrant.

August 1, 1934.

NOT AUTHORIZED TO SEIZE WHEN MERELY STORED

Dear Sir:

Answering your letter of the 27th ultimo, I beg to say in my opinion you would not be authorized to search and seize slot machines on storage in buildings unless the same are kept for gambling purposes.

SECTION 17

SMALL LOAN LAW

August 22, 1933.

VAULT CHARGES UNLAWFUL WHERE ADDED TO INTEREST RATE,
AMOUNTS TO MORE THAN 3½% PER MONTH*Dear Sir:*

In reply to your communication of August 22, 1933, I beg to state that it is my opinion that a licensee under the so-called "Small Loan Law," being Chapter 10177, Acts of 1925, now appearing as Sections 3999, et seq., Compiled General Laws 1927, which owns its own vault, located within its own office space, and which charges a vault charge which, added to the interest rate, amounts to more than 3½% per month on the unpaid balance, violates said Act. Such action by the licensee is not made lawful by a subterfuge through which it indirectly charges such additional vault charge by leasing its vaults to a separate outside company, collecting therefor a certain percentage, or otherwise, of the revenue derived from such operation.

Section 13 of said Act includes any *service*, or other thing, or otherwise, by means of which the licensee charges *directly or indirectly* any interest in addition to that allowed by the Act. This is service, or some other device by which the interest rate is increased, and the result is precisely what the law was enacted to prevent.

March 30, 1934.

CORPORATION PURCHASING EARNED SALARY OR WAGES, COMES
WITHIN SCOPE OF SMALL LOAN LAW*Dear Sir:*

This is in response to your communication of March 1, 1934, wherein you ask whether or not a corporation is amenable to the provisions of Chapter 10177, Acts of 1925, now appearing as Sections 3999 et seq., Compiled General Laws of 1927, which engages in the business of advancing money under the guise of a purchase of earned salaries or wages. The transaction is evidenced by the following written instruments:

OFFER TO SELL A CHOSE IN ACTION REPRESENTED BY
AN ACCOUNT RECEIVABLE*State of Florida, Duval County:*

I, the undersigned, hereby offer to sell CREDIT CLEARING CO., Inc., my account for salary or wages already earned by me while in the employ of the _____, in the capacity of _____ or otherwise; from the _____ day of _____, 193—, to the _____ day of _____, 193—, said account amounting to \$_____, and in order to induce the said CREDIT CLEARING

SMALL LOAN LAW

CO., INC., to purchase the said account I agree to accept for the same the sum of \$_____.

It is distinctly understood and agreed by all the parties to this transaction that this is to be an absolute and unconditional sale of the account above described.

As a further inducement to the said CREDIT CLEARING CO., INC. to purchase said account, I warrant and represent to be true that I am over the age of twenty-one years; that I am employed by the above company and that the particular wages above described have already been earned by me; that there are no off-sets or counter claims against said wages, and that there are no previous orders, assignments, garnishments or attachments outstanding which would in any way affect the title to said account; that said account is just, true and unpaid.

I FURTHER REPRESENT THAT I HAVE READ THE FOREGOING INSTRUMENT AND THE ATTACHED BILL OF SALE AND KNOW THE CONTENTS THEREOF, and that the same are true. The foregoing offer and the attached bill of sale contain the whole transaction between myself and the said CREDIT CLEARING CO., INC.

This _____, A. D. 193—

Witness

Address.....

BILL OF SALE OF THE ABOVE DESCRIBED CHOSE
IN ACTION

Jacksonville, Fla., _____193—

\$_____

Know All Men by These Presents:

That for value received, I hereby sell to CREDIT CLEARING CO., INC., doing business in the City of Jacksonville, Fla., my account for salary or wages already by me earned from the _____ day of _____, 193—, to the _____ day of _____, 193—, in the capacity of _____, said account amounting to \$_____ Dollars, and due me by _____.

This sale and assignment is made with the distinct understanding that the purchaser and assignee assumes all risk of loss that may now exist or hereafter arise, on account of said party, firm or corporation, to whom this is directed, being or becoming insolvent, or for any cause failing to pay said account, the money above described. All of said risk the buyer and assignee herein assumes.

SMALL LOAN LAW

THIS IS AN ABSOLUTE AND UNCONDITIONAL SALE OF SAID ACCOUNT, THE MONEY ABOVE DESCRIBED.

In order to induce CREDIT CLEARING CO., INC., to make the purchase of said account, the money herein described, I hereby state and warrant to be true, that I am employed by said employer, in the capacity above stated, that I was so employed during said time and while so employed I earned as salary or wages the said amount.

I hereby direct my said employer to pay CREDIT CLEARING, INC., the above described amount due me. I hereby authorize the purchaser of this account, in my name and stead, and as my attorney in fact, to sign my name to any and all checks, vouchers, receipts and acquittances necessary and proper to be signed in order to collect said account, the said money, and to evidence the payment of same.

It is understood by the undersigned that the said buyer has the option of notifying the party, firm or corporation to whom this is directed of the fact of this sale of said account having been made to said buyer at any time said buyer may choose to do so. This instrument is contractual in its nature and represents the sole agreement between the parties.

Given under my hand and seal the day and year above stated.

ATTEST:

.....(Seal)

It is my opinion that a corporation engaged in such business is in substance and effect in the business of making a loan or advance on the security of an assignment of salaries or wages. The fact that such salaries or wages are earned, though probably not yet due under the terms of the employment contract, is immaterial. We must, as has been repeatedly adjudicated, look to the substance rather than the form of the transaction or the nomenclature which the parties may employ.

Such corporation is not a "bona fide purchaser of choses in action," and therefore, cannot shield itself under Section 4016, Compiled General Laws of 1927.

I am, therefore, of the opinion that such corporation is amenable to the provisions of the Small Loan Act of Florida.

SECTION 18

STATE AUDITORS

May 20, 1933.

GOVERNOR MAY REMOVE ASSISTANT STATE AUDITORS FOR
CAUSE*Dear Sir:*

Section 2 of Chapter 12279, Acts of 1927, which appears as Section 230 of the Compiled General Laws of Florida 1927, provides for the appointment by the Governor of one State Auditor and ten Assistant Auditors, whose term of office shall be for four years unless sooner removed by the Governor for incompetency or neglect of duty.

Section 15 of Article IV of the Constitution makes incompetency a cause for suspension from office by the Governor of all officers that shall have been appointed or elected, and that are not liable to impeachment.

The Supreme Court of Florida in an Advisory Opinion to the Governor, 64 Fla. 168, 60 So. 337, in construing Section 15 of Article IV with relation to the power of the Governor to suspend officers, said that that power is necessarily confined to the current term of office, and that the Constitution contemplates that the causes for suspension from office shall arise from the conduct of the officer during the term for which the officer is then in commission. The act under consideration in that case was that the officer some eight years prior thereto, while serving as a member of the Board of County Commissioners, corruptly received a bribe of a considerable sum of money to influence his action and vote as a member of such board of county commissioners. That was a completed offense, and the Court held that he could not be suspended at the time of the rendition of the opinion for the commission of an act eight years prior thereto.

Incompetency is a continuing disqualification, for which an officer may be suspended by the Governor and removed by the Senate at any time so long as such incompetency exists. Incompetency on the part of an official may be evidenced by either acts of commission or omission, and such acts may have occurred under a former commission; yet, if the fact of incompetency still exists, it is cause for suspension by the Governor and removal by the Senate under a present commission.

November 5, 1934.

ASSISTANT STATE AUDITOR CAN NOT RECOVER SALARY AFTER
REMOVAL BY GOVERNOR*Dear Sir:*

This is to acknowledge receipt of your letter of the 31st ultimo enclosing the letter of Mr. _____ in which he presents the claim of _____ who was appointed and commissioned, as it is said, by the

STATE AUDITORS

Governor as Assistant State Auditor for the term of four years from December 18, 1932. It is stated that Mr. _____ was suspended from office by the Governor on March 28, 1933, and reinstated May 15, 1933, and again suspended on August 16, 1934, notice of which was received by Mr. _____ September 13, 1934. It is further stated by Executive Order that his salary was reduced but it is not stated how much or when such reduction was made.

Section 230, Compiled General Laws of Florida, 1927, provides for the appointment by the Governor of Assistant State Auditors, whose term of office is therein fixed to be for four years "unless sooner removed by the Governor for incompetency or neglect of duty." It is to be noted that this is a removal and not a suspension, as provided for in Section 15 of Article IV of the Constitution of Florida. The provision in Section 15 of Article IV of the Constitution: "No officer suspended who shall under this Section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension" applies only to those officers the removal of whom requires the concurrence of the Senate and does not apply to Assistant State Auditors who may be removed by the Governor for incompetency or neglect of duty as provided in Section 230, Compiled General Laws. It is, therefore, my opinion that Mr. _____ would not be entitled to any compensation for the time he was out by reason of removal by the Governor under the provisions of said Act.

The matter of what compensation he was entitled to for the time he actually served presents a different question. The Legislature by Chapter 15720, Acts of 1931, fixed the annual salaries of Assistant State Auditors at \$3,000.00, and it is my opinion that there was no authority outside the Legislature to change that salary. However, the Legislature of 1933 by Chapter 15859, Section 4, specifically repealed Chapter 15720. In said Chapter 15859, the salaries of certain State Officers and employees were fixed but Assistant State Auditors were not therein included. This latter Act took effect July 1, 1933. Therefore, the compensation of Assistant State Auditors since July 1, 1933, is such as is authorized in Chapter 15858, Acts of 1933, the general biennial Appropriation Act. There was in said Act appropriated for salaries of the State Auditing Department a lump sum of \$66,350.00 without any designation as to how the same should be applied. It follows, therefore, that the salaries of the Assistant State Auditors from July 1, 1933, were left to a determination of that Department. Applying this specifically to the claim of Mr. _____, it is my opinion that he has no valid claim for additional salary since July 1, 1933, over that fixed by the State Auditing Department. If he did not receive his full compensation at the rate of \$3,000.00 per annum for the time he actually served between the effective date of Chapter 15720, Acts of 1931, and July 1, 1933, he would be entitled to such difference and this would be the extent of the legality of his claim.

SECTION 19

STATE LAND

June 18, 1934

NO TRESPASS WHERE PERSON HOLDS TAX DEED TO PROPERTY

Dear Sir:

I am in receipt of your letter of the 16th instant, the first paragraph of which reads as follows:

"My attention has been called to a case where two joint tracts of land, one containing 40 acres, and the other containing eighty acres, have been sold for taxes. A building was situated on the eighty-acre tract. A tax deed was issued on the forty-acre tract to a man who immediately moved the building from the eighty-acres to his forty. Afterward, another man acquired a tax deed to the eighty acres and demanded that the house be moved back. I am of the opinion that the man who moved the house could be convicted for trespassing. I will appreciate it very much if you will advise me what rights the State has in this instance."

Chapter 16185, Acts of 1933, prohibits the trespass upon State lands and provides penalties therefor, but it is specifically provided in said Act that the same shall not apply to any lands vested in the State by reason of any tax sale certificate.

If the above lands were covered by State tax certificates the civil rights of the State would appear to be only those of a lien holder. Such lien as the State might have had does not seem to have been impaired for the reason that some one has acquired a tax deed to the property and any lien that the State might have had would appear to have been satisfied. In this situation it does not appear that the State has any civil rights in the premises.

July 17, 1934

INJUNCTION PROPERTY REMEDY AGAINST REMOVAL FENCES,
ETC., FROM—

Dear Sir:

I am in receipt of your letter of July sixth, making inquiry if the State can prevent the moving of houses, fences and other improvements on property sold to the State for taxes.

In reply, I beg to say that if the removal of the houses, fences and other improvements from lands covered by State and County tax certificates would reduce the value of the lands to a point where they would not be worth the amount of the delinquent taxes, it is my opinion that the Court would grant an injunction restraining the removal thereof.

If the Board of County Commissioners should decide to authorize their attorney to bring such suit, the same should be brought in the name of the State of Florida, for the use and benefit of the State of Florida and the county interested.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
STATE LAND

July 19, 1934

TRUSTEES OF INTERNAL IMPROVEMENT FUND HAVE AUTHORITY
TO SELL OR LEASE SHELL, PHOSPHATE, ETC., IN OR UNDER
ANY OF THE SOVEREIGNTY LANDS OF THE STATE

Dear Sir:

I am in receipt of a letter from Major B. C. Dunn of the United States Engineering office in Jacksonville, Florida, under date of July eighteenth, which has to do with a shell lease issued by the Trustees of the Internal Improvement Fund to the Atlantic Shell Company, under date of June 15, 1932, for the period ending June 15, 1935, which letter indicates that copies thereof were also forwarded to the Trustees of the Internal Improvement Fund and to Mr. George W. Davis, Supervisor of Conservation.

I am quoting below my reply to said letter, in which I have advised Major Dunn of the issue of the above mentioned lease and of its still being in full force and effect.

Pursuant to his inquiry, I also referred him to the statute under which said lease was executed. The question of protest from the Supervisor of Conservation is respectfully referred to the Trustees of the Internal Improvement Fund and the State Conservation Board, for such advice to Major Dunn as may seem proper from said Boards.

My reply reads as follows:

"I am in receipt of your letter of July eighteenth, making inquiry relative to Shell lease from the State of Florida to the Atlantic Shell Company, for taking shell in Sister's Creek, a small tributary of the St. Johns river.

You state that application of the Atlantic Shell Company from the United States Government covering said area is now under consideration by your office. You also state that numerous letters have been received at your office objecting to the proposed dredging in said Sister's Creek, on the ground that said dredging would destroy the spawning places for fish and destroy fishing in said creek; and that you are also in receipt of a telegram from the Supervisor of Conservation at Tallahassee, copy of which is recited in your letter, which indicates a protest against the issue of such a permit on the ground that such dredging would ruin fishing and would probably contaminate or ruin oyster beds in said section.

In reply, I beg to say that the Trustees of the Internal Improvement Fund of the State of Florida are authorized to execute shell leases by Chapter 13670, Acts of 1929, Section 1 of which Chapter reads as follows:

"That the Trustees Internal Improvement Fund of the State of Florida be and they are hereby authorized to sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on or under any of the sovereignty lands of the State

STATE LAND

of Florida, upon such terms and conditions as may seem most advisable to the said Trustees and to the best interest of the State of Florida, the proceeds of such sales or leases to be credited to the Trustees Internal Improvement Fund.'"

You are also advised that on June 15, 1932, the Trustees of the Internal Improvement Fund executed a shell lease to the Atlantic Shell Company, authorizing said company to dredge and take shell from Sister's Creek, and other designated areas, for the period ending June 15, 1935. This lease is still in force and effect.

Since your letter recites a protest on the part of the Conservation Department of Florida, I am referring this matter to the Trustees of the Internal Improvement Fund, the personnel of which Board is the same as the personnel of the State Conservation Board, with the addition of the Secretary of State and Superintendent of Public Instruction. The Trustees of the Internal Improvement Fund usually meet on Wednesday of each week, and it will be the middle of next week before the matter can be considered by the Board."

October 17, 1934

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS NOT
AUTHORIZED TO SELL LANDS BELONGING
TO STATE HOSPITAL

Dear Sir:

I am in receipt of your letter of the 10th inst., with letter attached from Mr. _____ seeking to purchase from the State a designated lot which is a part of the lands of the Florida State Hospital. You make inquiry as to whether the Board of Commissioners of State Institutions has a legal right to sell State property owned by the State for the Florida State Hospital.

Article IV, Section 17 of the State Constitution, reads as follows:

"The Governor and the administrative officers of the Executive Department shall constitute a Board of Commissioners of State Institutions, which Board shall have supervision of all matters connected with such institutions in such manner as shall be prescribed by law."

Article IV, Section 20 of the State Constitution, reads as follows:

"The Governor shall be assisted by administrative officers as follows: A Secretary of State, Attorney General, Comptroller, Treasurer, Superintendent of Public Instruction and Commissioner of Agriculture, who shall be elected at the same time as the Governor, and shall hold their offices for the same term: Provided, That the first election of such officers shall be had at the time of voting for Governor A. D. 1888."

STATE LAND

Sections 3641 to 3653, inclusive, Compiled General Laws of Florida 1927, are the statutes relating to the Florida State Hospital. I find no authority in said statutes or said provisions of the Constitution for the Board of Commissioners of State Institutions to sell lands purchased for the use of the Florida State Hospital. Neither do I find authority for such sales under other provisions of the State Constitution nor the State statutes.

Attention is called to 59 C. J. 164, States, 276, the first paragraph of which reads as follows:

"A state has in general the same rights and powers in respect of property as an individual. It may acquire property, real or personal, by conveyance, will, or otherwise, and hold or dispose of the same or apply it to any purpose, public or private, as it sees fit. The power of the state in respect of its property rights is *vested in the legislature*, and the legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose; and, where the state has not given its consent to the acquisition of property in a particular way, it is not entitled thus to acquire it. The legislature may, however, ratify the unauthorized act of a state officer in dealing with its property. The possession of state property by the authorized agents and officers of the state is the possession of the state."

Attention is further called to 59 C. J. 166, States, 280, the first paragraph of which reads as follows:

"State property cannot be sold or disposed of except by authority of law, but, subject to constitutional restrictions, the state, like any individual owner of property, may convey its property in any way it sees fit, and its grant may be express or by necessary implication. The power to dispose of state property is vested in the legislature which may make provision therefor by statute, and the statutory provisions must be complied with or the sale will be void. A statute conferring on the state the general authority to sell property must be confined to property held in its proprietary character. The legislature may, however, ratify an unauthorized sale, and only the legislature can so ratify. A deed executed by a state officer in behalf of the state, under authority of the legislature, is a sufficient conveyance of land belonging to the state; and a conveyance executed by the duly authorized officers passes the state's title, although executed in the names of the officers and not in the name of the State; but a conveyance of land to a state officer as such and his successors in office is not sufficient to vest title in the state, in the absence of evidence that the land was bought for the state, or that the officer was authorized to take title for the state in his own name. A sale of state property by authorized

STATE LAND

officers is binding on the state, although the officers refuse to execute the contract, and the law authorizing the sale is afterward repealed, and the officers can be compelled to complete the sale. A state does not warrant the title to land which it grants, but a grantee from the state is not estopped to deny what the state could assert. A statute authorizing state officers to sell or dispose of state property vests no title to such property in the officers."

See also 25 R. C. L. 388 and 389, States, 21 and 23.

From the above it appears that the Board of Commissioners of State Institutions has not been authorized by the Constitution nor any of the statutes to make such sale. It also appears that without some legislative authority said Board is not authorized to sell such lands. It also appears that the Legislature may by statute ratify any sales of this character already made.

December 17, 1934

TRUSTEES OF I. I. FUND MAY LEASE ISLAND IN ST. JOHNS RIVER
NOT OWNED BY ANOTHER STATE AGENCY

Dear Sir:

I am in receipt of your letter of the 12th instant, advising that the Trustees of the Internal Improvement Fund, on September 12, 1934, issued to you Lease No. 18,254 covering an unsurveyed island in St. Johns River, lying just North of East $\frac{3}{4}$ of Section 35 and Lot 2 of Section 36, Township 10 South, Range 26 East, and being a part of Murphey's Island, said unsurveyed island being separated from Murphey's Island by a small creek.

You make inquiry as to the authority of the Trustees to make such lease.

In reply I refer you to Section 1446 (13), Compiled General Laws of Florida, 1934 Supplement, being originally Section 1 of Chapter 15642 Acts of 1931, reading as follows:

"The trustees of the internal improvement fund of the State of Florida are hereby vested and charged with the administration, management, control, supervision, conservation and protection of all lands and products on, under or growing out of or connected with lands owned by or which may hereafter inure to the State of Florida not vested in some other State agency. Such lands shall be deemed to be:

"All swamp and overflowed land held by the State of Florida or which may hereafter inure to said State.

"All lands owned by the State by right of its sovereignty.

"All internal improvement lands proper.

"All tidal lands.

STATE LAND

"All lands covered by shallow waters of the Ocean, Gulf or bays or lagoons thereof, and all lands owned by the State covered by fresh water.

"All parks, reservations or lands or bottoms set aside in the name of the State not under the supervision and control of some other agency of said State, or of the United States or other governmental agency.

"All lands which have accrued or which may hereafter accrue to the State from any source whatsoever, unless or until vested in some other State agency."

I also refer you to Section 1391, Compiled General Laws of Florida, 1927, with reference to tidal lands being vested in the Trustees of the Internal Improvement Fund, reading as follows:

"The title to all islands, sand bars, shallow banks or small islands made by the process of dredging of the channel by the United States Government located in the tidal waters of the counties in the State of Florida, or similar, of other islands, sand bars and shallow banks upon which the water is not more than three feet deep at high tide and which are separated from the shore by a channel or channels, not less than five feet deep at high tide, or sand bars and shallow banks along the shores of the mainland in which the title is not, at this date, invested in prior parties, is hereby invested in the trustees of the internal improvement fund of the State of Florida, to be held by the State of Florida, and disposed of as hereinafter provided."

I also refer you to Section 1392 of the same Compilation authorizing the Trustees to make sale and conveyance of lands mentioned in Section 1391.

I also refer you to Section 1871, Compiled General Laws of Florida, 1934 Supplement, the first paragraph of which reads as follows:

"For the purpose of this law the St. Johns River including Doctors Lake as far south as Volusia Bar shall be considered salt waters and fish may be taken and used by the citizens of this State and persons not citizens thereof subject to the restrictions and reservations hereinafter imposed by this law or otherwise."

The lands in question appear to be covered by the waters of the St. Johns River, a navigable body of water, and, therefore, sovereignty lands. Since the lands are some distance from the mouth of the St. Johns River there may be some question as to whether or not they may be classed as tidal lands and vested in the Trustees of the Internal Improvement Fund under Section 1391, above quoted. There may be some question also as to the authority of the Trustees to lease said lands under the provisions of Section 1446 (13), above quoted, for the reason, that the title of the Act, Chapter 15642, Acts of 1931, recites that it is an Act authorizing and changing the Trustees of the Internal Improvement Fund

STATE LAND

with the *supervision* of State lands not vested in some other State agency, while the body of the Act recites that the Trustees of the Internal Improvement Fund "are hereby vested and charged with the *administration*, management, control, supervision, conservation and protection of all lands," etc. I am inclined to think that the word *supervision* used in the title of the Act is broad enough to cover the word *administration* used in the body of the Act and that both words carry with them authority for the Trustees to make leases of lands mentioned in said Act, among which lands so mentioned are sovereignty lands such as were leased to you. The lease of the Trustees was doubtless based either on authority of Section 1446 (13) or Sections 1391 and 1392, or upon said Sections construed together.

SECTION 20

STATE OFFICERS AND EMPLOYEES

January 4, 1933.

WHETHER OR NOT AN INDIVIDUAL MAY HOLD MORE THAN ONE
STATE OFFICE AT THE SAME TIME*Dear Sir:*

This refers to your favor of the 3rd instant requesting my opinion as to whether or not a County Commissioner could hold a position as member of the State Road Department. I beg to call your attention to Section 15 of Article XVI of the State Constitution wherein it is provided that:

"No person shall hold or perform the functions of more than one office under the Government of this State at the same time."

It is my opinion that a member of the Board of County Commissioners could not, while occupying that office, occupy the office of member of the State Road Department. Furthermore, the duties incumbent upon the officers filling these two offices would unquestionably in many instances come in conflict. It is my opinion that if Mr. Meisch should be appointed a member of the Road Department he would be forced to resign as County Commissioner. I know Mr. Meisch very well and he would make a splendid official anywhere at any time, in my opinion.

March 1, 1933.

STATE NOT AUTHORIZED TO PAY PREMIUMS ON BONDS FOR
OFFICIALS AND EMPLOYEES UNLESS SPECIFIC OR IMPLIED
AUTHORITY BE GIVEN BY LEGISLATION*Dear Sir:*

I have your letter of the 27th instant, in which you ask to be advised specifically as to each and every Department of the State for which the State can pay premiums on official bonds for either the heads of departments or employees, who are required to give bond.

In reply I would respectfully advise that where there is neither specific statutory authorization nor requirement for the payment of premium on official bonds, nor provision for the payment of all necessary or incidental expenses in connection with the office or department, then it is safe to say that the premium on such bonds cannot be paid from State funds. There may be some instances where the statute specifically authorizes the payment of such premiums, and others where it may be done in cases where provision is made for the payment of all expenses of an office or department from certain funds.

These are matters that must be determined in each particular instance, as the occasion therefor arises, from applicable provisions of law

STATE OFFICERS AND EMPLOYEES

or from the absence of any specific or implied authorization. The only general rule that can be stated is that in the absence of either specific or implied authorization, such premiums cannot be paid from State funds.

If and when the occasion arises that you need my assistance or advice in determining this question in any particular case, you have only to call on me.

May 29, 1933.

NO PERSON PERMITTED TO HOLD MORE THAN ONE
STATE OFFICE; CERTAIN EXCEPTIONS

Dear Sir:

This refers to your favor of May 10, addressed to the Governor of the State, which has been handed to this office for reply.

I beg to advise that the Constitution of Florida, Article 16, Section 15, provides that "No person shall hold, or perform the functions of, more than one office under the government of this State at the same time: Provided, Notaries Public, militia officers, county school officers and Commissioners of Deeds may be elected or appointed to fill any Legislative, executive or judicial office."

August 19, 1933.

MAXIMUM AMOUNT OF TRAVELING EXPENSES FOR SUBSISTENCE
FOR STATE OFFICIALS IS \$4.50 PER DAY

Dear Sir:

Replying to yours of August 14th, with which you enclose a letter from Dean Wilmon Newell addressed to Dr. John J. Tigert, in which several questions are propounded regarding the proper interpretation of House Bill No. 519, Ch. 16184, Acts of 1933, relative to traveling expense to be allowed officers and employees of the State under the provision thereof, permit me to say the Act contains the following provision:

"That the maximum amount to be allowed State Officers and employees when traveling on State business hereafter shall be for subsistence not more than \$4.50 per day, and the amount allowed for mileage, when the State officer or employee is using a privately owned car, shall not be more than five cents per mile."

We find by reference to Title 5, Section 821, U. S. Code, Annotated, that the Federal statute on this subject expressly defines subsistence to mean both lodging and meals. While the Florida statute does not define subsistence to mean both lodging and meals, I am of the opinion in view of the provisions of the Federal statute that it should be held

612 BIENNIAL REPORT OF THE ATTORNEY GENERAL
STATE OFFICERS AND EMPLOYEES

to have been the legislative intent to make \$4.50 per day the maximum amount that a State Officer or employee may charge for lodging and meals when traveling on State business for the State of Florida.

In Mr. Newell's second question he has asked whether or not the limit of \$4.50 per day applies to the average daily expenditures during a given trip or during the number of days in which the officer or employee is in a travel status during the month?

I think that the proper answer to this question is that the officer or employee may charge for any day his actual expense not to exceed \$4.50.

Mr. Newell's third question relates to the beginning and ending of a travel day.

I think the proper answer to this question is to say that a travel day should be held to begin at the time the officer or employee begins traveling and it ends on the following day at the same time.

In view of the language of the 1933 Act, it seems it must be held that the maximum \$4.50 applies both to travel in this State and to traveling expenses incurred by officers and employees when traveling on State business for the State of Florida in foreign states.

August 8, 1933.

EXPENSE ACCOUNTS OF STATE OFFICIALS UNDER HOUSE BILL
519, ACTS 1933, DO NOT APPLY TO GOVERNOR
AND HIS CABINET

Dear Sir:

This refers to your favor of July 6th., requesting my opinion as to whether or not House Bill No. 519, Acts of 1933 Legislature, (Chapter 16184), applies to the Governor and his Cabinet.

In reply I would state that it is my opinion that House Bill No. 519 does not apply to the Governor nor the Cabinet officials, who are constitutional administrative officers. These officers have definite constitutional duties, and this Act, in my opinion, would not apply to them, nor to any one of their assistants while acting for, on behalf of, and in the stead of either of them. The Act, in my opinion, does apply to all other State officials and State employees.

August 10, 1934.

SUPERINTENDENT OF PUBLIC INSTRUCTION ENTITLED TO BACK
SALARY WHICH HE FAILED TO RECEIVE
DURING FISCAL YEAR

Dear Sir:

I am in receipt of your letter of the 8th instant, advising that Honorable W. S. Cawthon, Superintendent Public Instruction, has made requisition on your office for \$50.00 per month, beginning with the month of January, 1933, and ending with the month of June, 1933, in the total

STATE OFFICERS AND EMPLOYEES

amount of \$300.00, for salary which he deducted from his monthly requisitions during that period of time, and which he is now asking your office to pay, which you state covers salary that should have been paid him from the appropriation for the biennium ending July 1, 1933. You make inquiry if your office may honor this requisition.

In reply your attention is called to the General Appropriation Act of 1931, Chapter 15719, and your particular attention is called to the appropriation for the State Superintendent of Public Instruction, appearing on pages 1192 and 1193 of the 1931 Acts.

You will note that the Act prescribes that the total amount expended by the Department shall not exceed \$40,860.00.

Your attention is further called to Section 4 of said Appropriation Act reading as follows:

"That at the end of the period for which the appropriations contained in this Act were made any funds appropriated by this Act not expended or contracted for during the period shall revert to the fund out of which it is to be paid."

In my opinion the funds appropriated to the office of State Superintendent of Public Instruction would not under said Section revert to the fund out of which it was to be paid for the reason that the State Superintendent had rendered continuous service as such officer, during the biennium covered by said Appropriation Act, and the State may be considered under contractual obligation to pay the full amount appropriated to such office. In this situation, the above requisition should, in my opinion, be honored and paid, provided such honoring and payment will not cause the amount expended by the Department to exceed the above mentioned statutory limit of \$40,860.00.

September 4, 1934.

METHOD OF ISSUING WARRANT WHEN DECEASED

Dear Sir:

This is in response to your inquiry by which I am advised that an employee of the State Road Department died August 30th, 1934. You ask the manner in which warrant for his wages should be handled.

In reply I beg to advise that Sections 7068 and 7069, Compiled General Laws, of Florida, 1927, provides as follows:

"It shall be lawful for any employer, in case of the death of an employee, to pay to the wife or husband, and in case there is no wife or husband, then to the child or children, provided the child or children be over the age of eighteen years, and in case there is no child or children, then to the father or mother, any wages that may be due said employee at the time of his death.

"Any wages so paid under the authority of this Chapter shall not be considered as assets of the estate and subject to administration."

It is my opinion that this statute covers State employees and you are authorized to proceed thereunder.

STATE OFFICERS AND EMPLOYEES

I understand that the deceased left a widow and, in such event, you should cancel the old warrant, which I understand had been drawn to the order of deceased, and issue a new warrant payable to the order of his widow as such.

November 9, 1934.

WHEN SENATOR OR REPRESENTATIVE PROHIBITED FROM HOLD-
ING STATE OFFICE; "ACTING MOTOR VEHICLE COMMIS-
SIONER;" DUTIES OF COMPTROLLER AND TREASURER
UNLAWFUL DISBURSEMENTS

Dear Sir:

I acknowledge receipt of your letter of the 1st instant, propounding three legal questions which I answer in their numerical order.

(1) Section 5 of Article 3 of the Constitution of Florida provides that no Senator or member of the House of Representatives (of the Florida Legislature) shall, during the time for which he was elected, be appointed or elected to any civil office under the Constitution of this State, that has been created or the emoluments whereof shall have been increased, during the term for which such member was elected.

A strict literal interpretation of this provision, as distinguished from its spirit, does not prohibit a member of the Legislature, during the time for which he was elected, from holding an employment in a Department created or the emoluments whereof were increased during his term of office, but does prohibit his election or appointment to a civil office under the Constitution of Florida, which was created or the emoluments of which were increased during the term for which he was elected as a member of the Legislature.

(2) There is no such office under the Constitution or laws of Florida as "Acting Motor Vehicle Commissioner."

(3) Section 4 of Article IX of the Constitution of Florida provides: "No money shall be drawn from the Treasury except in pursuance of appropriations made by law." The State Treasurer and Comptroller are administrative officers, who may and should refuse to pay out State funds where there is no lawful authority therefor.

December 26, 1934.

MEMBERS OF STATE BOARDS CANNOT HOLD TWO
STATE OFFICES

Dear Sir:

Members of the State Board of Embalming and of the Boards of Pilot Commissioners are each officers in contemplation of Section 15 of Article 16 of the Constitution of Florida, and a person holding one cannot lawfully hold the other.

This is in response to a request by Honorable J. P. Newell, Executive Secretary, for an expression of my opinion in the matter.

SECTION 21

STATE ROAD DEPARTMENT

September 11, 1933.

MAY REQUIRE BOND OF EMPLOYEES AND PAY
PREMIUM THEREFOR*Dear Sir:*

This acknowledges receipt of your letter of September 9th, asking my opinion as to whether or not the State Road Department may pay the premiums upon the bonds which the Department requires of convict captains and guards, employed pursuant to Chapter 16181, Acts of 1933.

You call particular attention to the fact that captains have direct control over material for food supplies, which in some instances are valued at several hundred dollars.

It is my opinion that under said Chapter 16181, and particularly Section 2 thereof, and under Chapter 15720, Acts of 1931, Extra Session, the State Road Department has the power to adopt a rule or regulation requiring these employees to be bonded, and providing for the payment of the bond premium out of the funds of the Department; and that further, the purchase of such bond is such a purchase as can properly be considered "necessary for the efficient and economical employment of the State Convict Road force."

November 18, 1933.

AUTHORIZED TO EMPLOY AN ATTORNEY AND
FIX COMPENSATION*Dear Sir:*

This refers to your favor of November 18th, in which you request my opinion as to any limitation as to the amount that the State Road Department may pay for legal assistance, and in reply I would state that the Section you refer to, to-wit: Section 1639 of the Compiled General Laws, which is Section 7 of the Act of 1915, as amended in 1917 and as amended in 1919, provides for legal assistance to the Attorney General for handling Road Department matters, but the Road Department is authorized to employ legal counsel as it may deem necessary, and the compensation for the service of such legal counsel shall be paid as are other expenses of said Department, and provides further that such compensation shall not exceed in any one year the annual salary of the Attorney General of the State of Florida.

The Legislature, however, in 1923 by Chapter 9312, Laws of Florida, conferred certain powers upon the State Road Department, among which powers is the following, to-wit:

STATE ROAD DEPARTMENT

"Section 5. The Department is hereby authorized to employ an attorney to advise and assist in the prosecution of its work, *the compensation to be fixed by the Department.*"

The Act of 1923 repeals all laws and parts of laws in conflict with said Chapter 9312 and, therefore, it is my opinion that by the Act of 1923 the Legislature vested the State Road Department with full power to employ an attorney and fix the compensation of such attorney. Thus, it is, that the Legislature evidently intended that the responsibility of paying attorney's fees and employing legal assistance should rest upon the State Road Department, and under Section 5 above quoted and referred to there is no limit on such assistance or compensation to be paid other than the judgment and determination of what would be right and proper as determined by said Road Department.

December 8, 1933.

EXPENDITURES MADE UPON VOUCHERS ISSUED BY SECRETARY
AND COUNTERSIGNED BY CHAIRMAN LAWFUL

Dear Sir:

This is in response to your inquiry of even date as to whether or not the Comptroller should receive from your department a voucher covering expense items before issuing his warrant upon the Treasurer to pay the same.

Section 1634, Compiled General Laws of 1927, provides, in part, as follows:

"All expenditures by the State Road Department shall be made upon vouchers issued by the Secretary of the department and countersigned by the chairman unless otherwise provided, and paid by warrants issued by the State Comptroller upon the State Treasurer."

It is my opinion that this section of the Statute requires the Comptroller to receive from your department vouchers issued and signed as provided therein, before he is authorized to issue his warrant upon the Treasurer to pay. I am further of the opinion that Chapter 16184, Acts of 1933, providing for the issuance of transportation requests by the Comptroller, in no manner repealed or altered this requirement, but merely provides the basis upon which transportation may be secured, but the expense therefor, as an item to be charged against your fund, should continue to be evidenced by your regular vouchers.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 617
STATE ROAD DEPARTMENT

December 27, 1933.

STATE ROAD DEPARTMENT NOT PROHIBITED FROM PURCHAS-
ING MOTOR VEHICLES

Dear Sir:

Pursuant to your verbal request for my opinion as to whether or not the State Road Department is prohibited from purchasing motor vehicles by Chapter 13810, Acts of 1929, I beg to advise that my predecessor in office, Hon. Fred H. Davis, now Chief Justice of the Supreme Court, rendered an opinion under date of December 31st, 1929, which you will find reported in his annual report to the effect that the State Road Department was not prohibited from purchasing motor vehicles by Chapter 13810.

I concur in this opinion and have heretofore rendered an opinion under date of May 19th, 1931 to Hon. Ernest Amos State Comptroller to that effect.

February 7, 1934.

TRANSPORTATION OF POLES, LUMBER, ETC., OVER HIGHWAYS
AFTER DARK PROHIBITED

Dear Sir:

This acknowledges receipt of yours of February 2nd, with reference to paragraph number 9 of Section 3 of Chapter 16085, Acts of 1933, having to do with the transportation of poles, piling, logs, trees, lumber, or any article which from its nature is not capable of disjoining or dismantling, or whose fitness for the use of which it is intended would be destroyed by severing, from forest, point of production or growth, or point of manufacture or shipment, to point of shipment, treatment, re-planting, remanufacture or conversion.

Your specific question is whether or not the Section of the Act pertaining to this prohibits the transportation thereof after dark, regardless of the length not exceeding forty-five feet.

It is my opinion that this Section of the said statute prohibits the transportation of such articles after dark, even though the total length, including that of the vehicle, does not exceed forty-five feet.

April 6, 1934.

MAY PAY CERTAIN RENTAL TO EMPLOYEES USING PERSONAL
CARS FOR STATE BUSINESS

Dear Sir:

This is in reply to your communication of April 3, 1934, wherein you ask whether or not it is proper for the State Road Department to pay rental on privately owned cars to the owners thereof, who are using the

618 BIENNIAL REPORT OF THE ATTORNEY GENERAL
STATE ROAD DEPARTMENT

same in work upon various State road projects, without reference to the mileage limitation of five cents per mile established by Chapter 16184, Acts of 1933.

It is my opinion that the State Road Department may pay to an employee using his own car in work for the Department a sum of money by way of compensation therefor, which, together with the gasoline and oil furnished by the Department and the taxes thereon, does not exceed a sum equal to five cents per mile for the mileage covered by such car while being used for Department purposes.

May 10, 1934.

APPLICATION OF CHAPTER 16184 (SUBSISTENCE AND MILEAGE
LIMITATIONS) TO MOTOR VEHICLES RENTED

Dear Sir:

This is in response to your communication of May 7, 1934, with further reference to my letter of April 6th.

You advise that the State Road Department rents from its project engineers their automobiles at a specified price per month; that these motor vehicles are rented to take the place of and used principally as pick-up trucks; that the same are stationed upon specific projects for the use and transportation of the project engineer, his crew and instruments, strictly within the confines and limits of the specific projects; and that the vehicle during the time for which it is rented is absolutely under the control and subject to the demands and orders of the division engineer and highway engineer, and the operation thereof is not restricted to the owner, but is governed by the construction requirements of the project.

Under the above facts, it is my opinion that Chapter 16184, Acts of 1933, has no application to such motor vehicles so rented and so used.

June 25, 1934.

MAY EXERCISE RIGHT OF EMINENT DOMAIN UNDER CERTAIN
CONDITIONS

Dear Sir:

This is in response to your communication of June 22, 1934.

You state that for the purpose of constructing a bridge forming a link in the State highway across the Ocklocknee River between Franklin and Wakulla Counties with moneys obtained from the Public Works Administration, there has been formed a non-profit corporation known as Continental Bridge Company. In order to obtain this money it is necessary for the Bridge Company to execute to Public Works Administration its note secured by a mortgage, covering the proposed structure, together with approaches thereto. There are certain irregularities in

BIENNIAL REPORT OF THE ATTORNEY GENERAL 619
STATE ROAD DEPARTMENT

the title to the Eastern approach to the bridge, rendering it impossible for the Bridge Company to acquire valid title as a basis for such mortgage. The Bridge Company has now requested your Department to exercise its right of eminent domain, and upon completion of condemnation proceedings convey the land to the Bridge Company. The bridge is located on a State road and is to be constructed under the direct supervision of and with the cooperation of your Department.

You ask whether or not this may be done.

It is my opinion that under the particular facts and circumstances related above, your Department has the power to carry out this proposal, because it appears to be for the best interests of the State highway system and in line with the general purposes of the law creating and governing your Department.

However, it must be distinctly understood that this opinion is not to serve as a precedent in other matters, as each case must be determined by the particular facts and circumstances involved.

July 2, 1934.

AUTHORIZED TO PURCHASE AIRPLANE

Dear Sir:

I beg to advise that Chapter 14643, Laws of Florida, Acts of 1931, relative to the power and authority of the State Road Department, in connection with emergency aviation landing fields and with reference to its cooperation with the United States Department of Commerce, in the matter of laying out airways and landing fields, provides, in Section 2 thereof, as follows:

"The development of air transportation in the State of Florida requiring adequate landing fields, the State Road Department is authorized to locate and establish along said airways emergency landing fields as hereinafter provided, etc."

Section 9 of the same Chapter provides that:

"The State Road Department of the State of Florida may consult and cooperate with the Department of Commerce of the United States in the matter of laying out of airways and landing fields and in the preparation of airway maps, whenever practicable so to do."

Section 10 of this Chapter provides that:

"Nothing in this Act shall be construed as authorizing the State Road Department to expend funds for said purposes in excess of twenty thousand dollars in any one fiscal year."

Section 2, above quoted from the Chapter above referred to, was amended by Chapter 15871, by cutting out a limitation with reference to the distances that should exceed between established airport and an emergency airfield laid out by the State Road Department.

STATE ROAD DEPARTMENT

Under this law it is my opinion that the State Road Department is authorized to do those things which are reasonable, necessary, right and proper to perform its full duty in locating and establishing emergency landing fields, and in cooperating with the Department of Commerce in the matter of laying out airways and landing fields, and in the preparation of air maps; and, if the State Road Department, in its best judgment determines that it is right, proper and just, in order to properly carry out its functions under this law to purchase an airplane for such work and service, it is my opinion that this determination would be conclusive; and, if such a purchase is so made, that the same can be properly paid for out of the funds of the State Road Department, so long as such expenditure, along with other expenditures incurred under this Chapter, does not exceed the limitation of twenty thousand dollars in any one fiscal year.

July 26, 1934.

JURY HAS RIGHT TO VIEW AND FIX VALUE OF RIGHT-OF-WAY
IN EMINENT DOMAIN

Dear Sir:

I am in receipt of your letter of July twenty-third, making inquiry with reference to condemnation of land for road right-of-way by counties. You make particular inquiry as to the right of a jury to view the land and fix the compensation for same on the basis of their view of such land, rather than the testimony of witnesses.

In reply I refer you to Section 12 of the Declaration of Rights of the State Constitution, which provides that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken without just compensation. I refer you further to Section 29 of Article XVI of the State Constitution, which provides that no private property, nor right-of-way shall be appropriated to the use of any corporation or individual until full compensation therefor shall be first made to the owner or first secured to him by deposit of money, which compensation shall be ascertained by a jury of twelve men in a Court of competent jurisdiction as shall be prescribed by law.

I also refer you to Section 2286, Compiled General Laws of Florida, 1927, which provides, among other things, that the jury shall in all cases view the property unless the parties interested in the issue consent to dispense with the viewing.

Your attention is further called to the opinion of our Supreme Court in the case of Doty versus City of Jacksonville, 106 Fla. 1, 142 So. 599, and I quote below headnotes 3 and 5 of said decision:

"As result of such view jury can utilize and consider knowledge acquired of physical facts by actual view of premises, and, if any witness testifies to contrary of what jury have seen with their own eyes, they can disregard such testimony. But physical

condition and situation of property is only one of elements which jury must consider in determining amount of compensation which should be awarded property owner for property sought to be taken."

"Though knowledge gained by view of property may assist jury in interpreting and weighing testimony, when conflicting as to value and damage, elements of value and damages cannot be determined by view alone, and evidence and testimony of witnesses should not be disregarded by jury on these questions, nor should they go outside of the evidence and base their verdict on their individual opinions on such disputed facts, independent of the testimony, merely because they have had a view of the property involved. If rule were otherwise, jury's verdict could not be reviewed, even when clearly contrary to most reasonable and convincing testimony."

July 27, 1934.

PAYMENT OF VOUCHER FOR PURCHASE OF AIRPLANE
AUTHORIZED

Dear Sir:

This is in response to your favor of July twenty-seventh, relative to the payment of bill for an airplane for the State Road Department, the bill being in favor of Stinson Aircraft Corporation, Wayne, Michigan, for \$7,170.40, for the purchase of 1-SR-9282A Stinson Executive Reliant Airplane, 1934 Model.

I beg to refer you to a copy of my opinion which I have rendered to Governor Sholtz on July 2, relative to the matter. It seems now from the Resolution attached, which was duly adopted by the State Road Department at a meeting duly held on July 27, 1934, that the State Road Department has determined that it is right, proper and just, in order to properly carry out the functions delegated to it, to-wit: in Chapter 14643, Acts of 1931; and said Resolution further sets forth that proper appropriation was made out of the twenty thousand dollars provided for by Chapter 14643, for the purchase of an airplane.

It is my opinion that the matter is in such shape now that the bill can lawfully be paid, and warrant should issue therefor.

July 2, 1934.

MAY MAINTAIN EMERGENCY LANDING FIELDS; MAY PURCHASE
AIRPLANE; LIMITATION

Dear Sir:

I beg to advise that Chapter 14643, Laws of Florida, Acts of 1931, relative to the power and authority of the State Road Department, in connection with emergency aviation landing fields and with reference to

STATE ROAD DEPARTMENT

its cooperation with the United States Department of Commerce, in the matter of laying out airways and landing fields, provides, in Section 2 thereof, as follows:

"The development of air transportation in the State of Florida requiring adequate landing fields, the State Road Department is authorized to locate and establish along said airways emergency landing fields as hereinafter provided, etc." Section 9 of the same Chapter provides that:

"The State Road Department of the State of Florida may consult and cooperate with the Department of Commerce of the United States in the matter of laying out of airways and landing fields and in the preparation of airway maps, whenever practicable so to do."

Section 10 of this Chapter provides that:

"Nothing in this Act shall be construed as authorizing the State Road Department to expend funds for said purposes in excess of twenty thousand dollars in any one fiscal year."

Section 2, above quoted from the Chapter above referred to, was amended by Chapter 15871, by cutting out a limitation with reference to the distances that should exceed between established airport and an emergency airfield laid out by the State Road Department.

Under this law it is my opinion that the State Road Department is authorized to do those things which are reasonable, necessary, right and proper to perform its full duty in locating and establishing emergency landing fields, and in cooperating with the Department of Commerce in the matter of laying out airways and landing fields, and in the preparation of air maps; and, *if the State Road Department, in its best judgment determines that it is right, proper and just, in order to properly carry out its functions under this law to purchase an airplane for such work and service, it is my opinion that this determination would be conclusive; and, if such a purchase is so made, that the same can be properly paid for out of the funds of the State Road Department, so long as such expenditure, along with other expenditures incurred under this Chapter, does not exceed the limitation of twenty thousand dollars in any one fiscal year.*

August 17, 1934.

TRAFFIC INSPECTORS—AUTHORITY TO ENFORCE REGULATIONS
RELATING TO AIR-CRAFT

Dear Sir:

This is in response to your inquiry of July 10th, 1934, wherein you ask for my opinion as to the authority of Traffic Inspectors to enforce the regulations of the Department of Commerce of the United States relative to commercial aircraft and pilots, which regulations were adopted by Chapter 14642, Acts of 1931, as part of the law of Florida.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 623
STATE ROAD DEPARTMENT

It is my opinion that these Inspectors may properly assist in the enforcement of such regulations but only in co-operation with peace officers; such Inspectors have no authority to make arrests but their activities must be limited in like respect as my prior opinions have indicated.

October 10, 1934.

EMPOWERED TO ACQUIRE BY CONDEMNATION PROCEEDINGS
AND TO CONVEY BY WARRANTY DEED CERTAIN PROPERTY
IN BAY COUNTY FOR BRIDGE PURPOSES

Dear Sir:

I am advised that under and pursuant to a Loan Agreement, dated December 1, 1933, between Continental Bridge Company, a Florida Corporation (herein called the "Company"), and the United States of America (herein called the "Government"), the Company is about to sell to the Government \$148,087 aggregate principal amount of its 5% promissory notes to finance the construction of a bridge across Powell's Lake on State Road No. 115 in Bay County, Florida, which notes will be secured by a first mortgage on the bridge and approaches thereto. I am advised also that the bridge is to be constructed under the supervision of the State Road Department of Florida and that the Road Department proposes to lease the bridge upon its completion at annual rentals sufficient to pay the principal of and interest on the notes of the Company as the same shall mature.

I am further advised that the said Company has not been able to acquire good and marketable title to the property located in Bay County and necessary for the construction and operation of the project and that, in connection therewith, the Road Department has entered into a certain Agreement, dated October 15th, 1934, with the Government. I have examined a copy of said Agreement under which the Road Department agrees, among other things, that it will condemn at its own expense any and all adverse claims to the property deemed necessary or desirable for the construction and operation of the bridge by the Company, including any and all rights asserted by riparian owners, and to transfer to the Company, by full warranty deed and without cost to it, the property so condemned and acquired by the Road Department.

This is to advise you that under the particular facts and circumstances related above, it is my opinion that the Road Department has full power and authority to make said Agreement and to carry out and perform the terms and provisions thereof, including the above mentioned agreement to condemn all adverse claims and to convey the interest so acquired to the Company by full warranty deed and without cost to it.

SECTION 22

MISCELLANEOUS

February 16, 1934.

BANKRUPTCY—EFFECT OF DISCHARGE ON TAXES LEVIED BY
STATE, COUNTY OR MUNICIPALITY*Dear Sir:*

I have your letter of February 10th, inquiring as to the effect of a discharge in bankruptcy upon taxes levied by the State, County and a municipality.

Paragraph 35 of Title XI of the United States Code Annotated, which is a part of the National Bankruptcy Act and is the controlling authority in such a case, reads in part as follows:

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the State, County, District or municipality in which he resides * * *."

January 30, 1933.

BROWARD COUNTY PORT AUTHORITY—GOVERNOR AUTHORIZED
TO MAKE APPOINTMENT FOR UNEXPIRED TERM OF
DECEASED MEMBER*Dear Sir:*

Complying with your request for an opinion in the matter, I beg to advise that in my opinion the appointment made to fill a vacancy in the office of member of Broward County Port Authority caused by the death of Honorable John T. Sherwin was properly made for the unexpired term for which the deceased was elected.

Section 7 of Article IV of the Constitution provides:

"When any office from any cause shall become vacant and no mode is provided by the Constitution or laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy granting a commission for the unexpired term."

There is no provision made either in the Constitution or laws of the State for filling vacancies in the office of member of Broward County Port Authority, and on the other hand Section 9 of Chapter 15107, Acts of 1931, abolishing the Broward County Port District under the Act of 1927 and creating a new Broward County Port District provides that vacancies occurring in the Broward County Port Authority shall be

MISCELLANEOUS

filled by appointment of the Governor, and the members so appointed shall serve during the unexpired term for which they were appointed.

This is in line with my opinion expressed in the matter in a letter addressed to Honorable Maxwell Baxter on October 27, 1933, a copy of which is attached hereto.

September 12, 1933.

BROWARD COUNTY PORT DISTRICT—UNLAWFUL TO BORROW
MONEY TO CONSTRUCT PRECOOLING PLANT. PAYMENT
TO BE MADE BY PLEDGE OF NET REVENUE
FROM PLANT

Dear Sir:

You ask for my opinion with reference to Chapter 12562, Acts of 1927, as amended by Chapter 13940, Acts of 1929; as repealed and reenacted and amended by Chapter 15107, Acts of 1931, establishing Broward County Port District. In the light of what follows, I have deemed it unnecessary to answer specifically the questions asked, in as much as it is my opinion that the answer to question No. 2 contained in the letter of September 1st, written by Mr. _____ to Mr. _____, is conclusive.

In my opinion the express power to construct and operate the pre-cooling plant does not carry with it the power to borrow money and issue serial negotiable special revenue obligations payable from and secured by a first and exclusive pledge of the net revenue derived from the operation of the project, after provision only for expenses of operation and maintenance of the project.

I regret exceedingly that I cannot concur in your suggestion that this express power carries with it such implied power. My inability to concur with you is based upon the fact that the said Act of 1931, particularly Sections 13 and 14, and more particularly Section 14, provides the sole and only method of borrowing money to finance the construction or purchase of any of the improvements expressly authorized.

You will note by these Sections that the issuance of bonds is expressly provided for, and that limitations, restrictions and manner in which they may be issued are specifically set forth. When such is the case, it is my opinion that the method provided for by the statute is exclusive of any other method, whether by implication or otherwise.

Furthermore, the question of an implied power to pay for an improvement expressly authorized does not necessarily mean the power to borrow the money by the issuance of negotiable bonds with which to pay therefor.

However, while not expressing a legal opinion thereon, I suggest to you two methods which have occurred to me by which this might be handled.

MISCELLANEOUS

1. By paragraph 3 of sub-section (a) of Section 203 of House Resolution 5755, known as the Industrial Recovery Act, the President was authorized to acquire for the Federal Government by purchase or eminent domain real or personal property in connection with the construction of any project authorized, and to sell any security acquired or property so constructed or acquired, or lease any such property, with or without the privilege of purchase.

Pusuant to this, Circular number 1 under date of July 31st, 1933, issued by the Federal Emergency Administration of Public Works, as found in Section 5 of Article 5, on page 13 thereof, deals with this situation. You will note particularly case 4 on page 14 of said Circular. I assume that title to the actual site for the construction would be acquired by the District, and pursuant to Section 8 of said Act of 1933 could sell the said site, or the said site could be originally granted to the proper representatives of the Federal Government, and pursuant to said Section 8, the District could enter into a lease with the Federal Government, pledging as security therefor the net revenue to be derived from the operation of the project involved.

2. As a second alternative, I suggest to you the Florida Agricultural and Industrial Relief Commission created by Chapter 15861, Acts of 1933. Proceeding under this Act, it might be possible to allow the said Relief Commission to acquire title to the site, and then, pursuant to the powers vested in it, procure a grant or loan from the Federal Emergency Administration of Public Works.

Again, I wish to advise that the suggestion of these two alternatives dies not include my opinion as to their legality, inasmuch as, before giving such opinion, I shall want to pass upon the particular procedure you may see fit to adopt.

I regret exceedingly my inability to concur with you in the procedure you have outlined, but I believe you will appreciate the absolute necessity of this office handling these matters in strict accordance with what we conceive to be the law involved. We are very desirous that the citizens of Florida be given the full benefit of any grants or loans available from the Federal Government; but it is also necessary that limitations or restrictions imposed by constitutional or statutory provisions must be observed.

September 26, 1934.

CALOOSAHATCHEE IMPROVEMENT DISTRICT—APPLICATION OF
LAW IN RE AUTHORITY TO AUDIT AND POWER
OF REMOVAL OF TRUSTEES

Dear Sir:

I am in receipt of your letter of the 24th inst., relative to the Caloosahatchee Improvement District and making particular inquiry with reference to your authority to order an audit of the District and to your power of removal.

MISCELLANEOUS

The statutes involving this District are as follows:

Chapter 10437 of 1925, creating said District; Chapter 11870 of 1927, repealing said Chapter 10437 of 1925 and abolishing Caloosahatchee Improvement District but providing that all legal obligations of the District shall not be impaired, and also providing for appointment by the Governor of three Trustees with power to wind up the affairs of the District, and providing for taxation to take care of outstanding obligations; Chapter 15724 of 1931, amending Sections 17 and 18 of said Chapter 11870 of 1927; Chapter 15909 of 1933, fixing the compensation of the Clerk of the Circuit Court in Glades, Hendry and Lee Counties in connection with the redemption, purchase or cancellation of tax certificates in the District; Chapter 15910 of 1933, amending Sections 4, 6 and 8 of said Chapter 11870 of 1927 and repealing Section 5-a of said Chapter.

The said statutes do not provide for the removal of Trustees or for filling vacancies in the membership of Trustees of said District. It is my opinion that under the provisions of Article IV, Sections 7 and 15, of the State Constitution you would be authorized to suspend any or all of the Trustees of said District from office and make appointments to fill vacancies caused thereby.

The statutes relating to the State Auditing Department appear to contemplate that such Department shall make audits only of State and County officers and boards. I do not think that the Trustees of said District can be considered State or County officers for the purpose of audit by the State Auditing Department.

The statutes relating to said District make no provision for auditing of the affairs of the District, but in my opinion the Trustees of said District would have the inherent powers to provide for reasonable and necessary audits of the Treasurer and the affairs of said District.

June 1, 1934.

CEMETERY COMPANIES—APPROVAL OF DIVIDENDS BY
COMPTROLLER

Dear Sir:

I am in receipt of your letter of the 31st ult., with attached financial statement. You make inquiry as to whether it is your duty, under the law, to make an examination as to the financial condition of said company in order to determine its ability to pay a dividend.

In reply your attention is called to Section 6465, Compiled General Laws of Florida, 1927, which provides for cemetery companies to be under the supervision of the State Comptroller, and which further provides that no profits shall be distributed by such companies by way of dividends or otherwise without the written consent of the Comptroller "which shall not be granted unless the Comptroller is satisfied that adequate provision has been made to provide for future maintenance." This appears to be the only statute on the subject of your inquiry from which it ap-

MISCELLANEOUS

pears you are not required to make an examination to determine the financial condition of such companies, but that you are only required to be satisfied of adequate provision having been made to provide for future maintenance. If an examination should be necessary for you to satisfy yourself, under the provisions of said statute, such an examination would be justified if funds are made available to cover the cost of same.

December 5, 1934.

COMMISSIONERS OF DEEDS—TAKING OF OATH—PAYMENT OF
FEE FOR COMMISSIONER

Dear Sir:

Answering your letter of the 26th ultimo, I beg to advise that application for appointment of Commissioner of Deeds should be made to the Governor of this State; the term of office is 4 years.

Every Commissioner appointed is required, before he shall proceed to perform any duty under and by virtue of Sections 486 to 488, Compiled General Laws of Florida, 1927, providing for the appointment of and naming the duties and powers of such Commissioners to take and subscribe an oath before a Notary Public or Justice of the Peace, in the City or County in which such Commissioner shall reside, well and faithfully to execute and perform all the duties of such Commissioner under and by virtue of the laws of this State, which oath shall be filed in the office of the Secretary of State under Section 460 (1), Compiled General Laws of Florida, 1934 Supplement, all appointive officers are required to pay a fee of \$10.00 before commission is issued.

January 12, 1933

FIREARMS—NOT UNLAWFUL TO CARRY IN AUTOMOBILE

Dear Sir:

Replying to your letter of January 10th, permit me to say it is not a violation of the law for a person to carry a gun or a pistol on the seat or in the pocket of his automobile.

Section 7202, Compiled General Laws of 1927, reads as follows:

"Whoever shall carry around with him or have in his manual possession in any county of this State any pistol, winchester rifle, or other repeating rifle without having a license from the county commissioners of the respective counties of this State, shall upon conviction thereof be punished by a fine * * *."

The law in question was intended to prohibit the carrying of firearms on or about the person, whether concealed or not, without having a license so to do.

MISCELLANEOUS

October 23, 1933

HARBOR MASTER—APPLICATION OF LAW IN RE DUTIES
AND EXPENSES*Dear Sir:*

Replying to your favor of October 17th, in which you request my advice relative to the authority of the Harbor Master to keep the waters of the Harbor of Tampa clear of obstructions such as sunken barges, lighters, etc., permit me to say.

Section 3909, Compiled General Laws of 1927, provides that the Harbor Master shall be ex-officio a member of the Board of Port Wardens and Pilot Commissioners of the port for which he is appointed, and shall act in obedience to the rules of such boards in all matters within their jurisdiction, with reference to which they may establish rules.

Section 3881, Compiled General Laws of 1927, authorizes the Board of Pilot Commissioners to make and promulgate in conformity with law, rules and regulations for the government and protection of the port.

Section 3882, Compiled General Laws of 1927, provides that the Board of Pilot Commissioners of each port shall take such steps as may be necessary to detect any violation in their ports or waters within their jurisdiction, of the laws for the protection of ports, harbors, bays and rivers, and they shall cause complaint to be made for the arrest of every offender against such laws. And the county commissioners of the county in which such pilot commissioners are appointed, shall audit and pay the expenses of the board of pilot commissioners, which shall be incurred under this section, as other charges against the county are audited and paid.

In the case of County Commissioners of Escambia County vs Pilot Commissioners of Pensacola, 52 Fla 197, 42 So 697, the Supreme Court of Florida said:

"This section which requires the board of pilot commissioners to take such steps as are necessary to detect any violation of the laws for the protection of ports, and requires the county commissioners to pay the expenses, is a valid enactment for the purposes therein stated."

And the Court in the same opinion said further:

"The necessity for incurring expenses is to be determined by the board of pilot commissioners."

I would suggest that you read the entire opinion in the case above cited.

In view of the provisions of law quoted, it is my opinion that the board of pilot commissioners is authorized to make and promulgate reasonable rules for the protection of their port, and such reasonable rules and regulations as may be necessary for the protection of navigation, and that such reasonable rules and regulations would be held by a court of competent jurisdiction to have the force and effect of law.

MISCELLANEOUS

It is my opinion that if and when the board of pilot commissioners made and promulgated reasonable rules for the protection of the port and harbor, such reasonable and necessary expenses as might be incurred for the enforcement of its rules and regulations would be payable by the board of county commissioners. However, I think, as a matter of governmental policy, that it would be proper for a board of pilot commissioners to consult with the board of county commissioners before incurring any substantial expense which the board of county commissioners would be required to pay.

July 6, 1933

INSANE PERSON—PROCEDURE FOR COMMITMENT

Dear Sir:

This refers to your letter of July 1, and I beg to advise you that when it is supposed that a person is insane or sufficiently devoid of reason to be incapable of self control, a petition signed by five reputable citizens, not more than one of whom shall be a relative of the person, setting forth that he or she is to each of the petitioners personally known and that their knowledge of the mental condition of the subject is sufficient to justify the belief that he or she is insane, and asking that an examination be made as provided by law, may be presented to the county judge, then the county judge to whom such petition is submitted shall appoint one intelligent citizen, who shall not have been a petitioner in the case, and two practicing physicians of good professional standing, and these three persons shall constitute an examining committee, and within a reasonable time they shall secure the presence of the supposed insane person and shall make such thorough examination as will enable them to ascertain his or her mental and physical condition at the date of the examination, and if considered insane, whether the insanity is acute or chronic, its apparent cause, the hallucination, if any, and the age and propensities of the subject; also whether indigent or possessing sufficient available means for his or her support; and this committee shall then make a report to the county judge, and if upon examination of the report the judge is satisfied that the person examined is insane, then under the law he must commit the party to the insane asylum.

I assume, of course, the county judge did this, but if he did not, then the man you mention was improperly committed, but if these statutory requirements were complied with, then I would say this man was properly committed to the asylum.

MISCELLANEOUS

March 21, 1934.

JUVENILES, DELINQUENT—SHERIFF AUTHORIZED TO MAKE
COMMITMENTS, NOT PROBATION OFFICER

Dear Sir:

I am in receipt of your letter of the 20th instant, making inquiry if you can make delivery of delinquent juveniles to the Florida Industrial School for Boys at Marianna and Florida Industrial School for Girls at Ocala.

In reply I beg to say the Sheriff is made by statute the Executive Officer of the several Courts, and I do not know of any authority for Probation Officers to make commitments of juveniles to such institutions even though such Probation Officer might be able to deliver juveniles to such institutions at a less cost than required for deliveries by Sheriffs.

December 3, 1934.

LEASES—MAY BE UNWRITTEN FOR LESS THAN ONE YEAR

Dear Sir:

Replying to your letter of the 28th ultimo, it is my opinion that the lease mentioned in Section 1 of Chapter 16066, Laws of Florida, Acts of 1933, may be unwritten, provided it does not extend beyond the period of one year.

In other words, I think the Legislature intended to prohibit the unlawful holding or possession of lands or houses by a lessee beyond the expiration of a valid lease, after ten days' written notice to vacate from the owner or the agent of such property to the lessee.

This, however, is not to be taken as an official opinion, since the law makes it my official duty to advise only State officers, boards, and agencies.

October 26, 1934.

LOTTERIES—PUNCH BOARD EMPLOYED WITH SALE OF
MERCHANDISE PROHIBITED

Dear Sir:

I am in receipt of your letter of the 24th instant, making inquiry as to the legality in Florida of the use of a punch board in connection with the giving away of a premium to purchasers of a laundry soap. You state that the customer would be given one try at the punch board with the purchase of soap and the winner would receive some gift. In reply I beg to say that in my opinion the use of a punch board, as outlined in your letter, would be contrary to the provisions of Section 7669, Compiled General Laws of Florida, 1927, reading as follows:

MISCELLANEOUS

"Whoever sets up, promotes or plays at any game of chance by lot or with dice, cards, numbers, hazard or any other gambling device whatever for, or for the disposal of money or other thing of value or under the pretext of a sale, gift or delivery thereof, or for any right, share or interest therein, shall be fined not exceeding one hundred dollars, or be imprisoned not exceeding three months."

Your attention is further called to 38 C. J. 302, Lotteries 29, reading as follows:

"Within the definition given a board in which holes are covered by paper wafers or otherwise contain numbers which are revealed, after payment of a fee, by punching or removing the covering, the numbers' corresponding to prizes, is a lottery device, even though each player is entitled to a certain return, in addition to the possibility of a prize."

June 8, 1933.

ORPHAN—MAY BE COMMITTED BY COUNTY JUDGE TO CORPORATION ORGANIZED FOR PURPOSE OF CARING FOR SUCH CHILDREN

Dear Sir:

This refers to your letter of May 21,

You ask, "In the event of death of the mother of a 9 year old boy whose father has been dead for 8 years, what becomes of the boy—legally? Who takes possession of him and in what manner is this carried out?"

I beg to quote you herewith the section of the Compiled General Laws covering this question:

"3712. (2341) COUNTY JUDGE MAY COMMIT ABANDONED CHILD TO CORPORATIONS, NOT FOR PROFIT, ORGANIZED FOR CERTAIN PURPOSES.—Whenever it shall appear to any county judge of this State that any child who may be brought before him, has no parent, guardian or other person to bestow upon it ordinary and proper parental care, or that it is abandoned or entirely neglected or cruelly treated by the person or persons sustaining the parental relation to it; or that it has no proper parental care or guardianship; or that it is being trained or allowed to be trained in vice and crime by the person or persons having charge of it; or that being in charge of no one, it is destitute and incapable of providing for itself, such judge may, in any case, by order, commit the custody and care of such child to any corporation, nor for pecuniary profit, organized under the laws of this State, the objects of whose organization may embrace the purpose of caring for any such

MISCELLANEOUS

child, and which corporation may, in the judgment such court, be competent and disposed to properly care and provide for such child."

Following sections of the law provides that the corporation may put the child in a home or institution, and also provides that this does not interfere with the adoption laws of the State.

If you have further inquiries with reference to this matter, you should take it up with the county attorney or the Juvenile Court Judge.

December 6, 1934.

PILOT COMMISSIONERS—NOT AUTHORIZED TO EMPLOY
ATTORNEY IN ABSENCE OF LEGISLATIVE ACT

Dear Sir:

I am in receipt of your letter of the 1st instant with reference to Pilot Commissioners employing an attorney and levying and collecting a tax for that purpose.

In reply I beg to say that I find no general statute providing for such appointment and the levying and collection of a tax for such purpose. I note your reference to Chapter 5729, Laws of Florida, Acts of 1907, authorizing the Pilot Commissioners of Escambia County to employ an attorney and providing means of obtaining revenue for that purpose. This Act, of course, applies only to the Pilot Commissioners of Escambia County. I assume you have made a thorough search for any other local or Special Act along this line and have not been able to find any such statute applicable to Pilot Commissioners of your Port. In this situation, I agree with you in order for your local Board of Pilot Commissioners to employ an attorney and secure a tax levy for his compensation it will be necessary to secure an Act of the Legislature providing for same.

September 11, 1934.

PUGILISTIC EXHIBITIONS—CONSTRUCTION OF LAW
DISABLED AMERICAN VETERANS

Dear Sir:

This is in response to your communication of August 15, 1934, in which you ask five questions, which I now proceed to answer:

(1) The right to conduct pugilistic exhibitions is restricted solely to those organizations and groups specifically set out and named in Chapter 14831, Laws of Florida, Acts of 1931, the same now appearing as Section 7188, Compiled General Laws of 1927, 1934 Supplement.

(2) It is my opinion that the statute in referring to "disabled American Veterans" refers to the national organization known as The Disabled American Veterans of the World War, which national or-

MISCELLANEOUS

ganization, I am informed, has a State Department in Florida as well as various chapters in several cities throughout the State. While the full name of the national organization was not given, it is my opinion that taken in conjunction with the balance of the statute, it indicates a definite legislative intent to refer to this known and established national organization in the same manner as it refers to the American Legion or to the Florida National Guard, or the Y. M. C. A. It therefore follows that this statute does not permit any group of American veterans, who might be disabled, to associate together and conduct pugilistic or boxing exhibitions.

(3) It necessarily follows that other groups or organizations not specifically named in the statute are excluded from the privileges therein granted.

(4) It is my opinion that two, three or more individual members of the American Legion, the Disabled American Veterans of the World War, the Florida National Guard, the Y. M. C. A., or a college, may not form themselves into a non-profit corporation and conduct boxing exhibitions, as defined in the said Act of 1931. The fact that the proceeds, or any part thereof, resulting from such enterprise, are devoted to charitable work, makes no difference.

(5) The question of whether or not injunctive proceedings will lie depends upon the facts of each particular situation, and I therefore express no opinion thereon.

July 18, 1934.

REAL ESTATE SUBDIVISIONS—SURVEYS, PLATS AND MAPS OF
REQUIRED BY LAW

Dear Sir:

I am in receipt of your letter of the 10th instant, making inquiry if there is a Florida law governing the development and sale of lot subdivisions such as islands and Everglades lands, which may at times be under water.

In reply I beg to say that I do not know of any such statute applying specifically to the class of lands mentioned by you, but you are referred to Sections 3101 to 3112 inclusive, Compiled General Laws of Florida 1927, relating to plats and maps of subdivisions. I regret that we have no pamphlet copy of the law to send you.

The statute provides for surveys to be made by a civil engineer or competent surveyor. It also provides for maps or plats of such survey with the description of the lands and a dedication of the plat by the owner or owners. Approval is also required from the county commissioners of the county, and the plat or map is filed in the office of the clerk circuit court.

MISCELLANEOUS

January 13, 1933.

RECONSTRUCTION FINANCE CORPORATION ACT—FEDERAL
COURTS HAVE JURISDICTION*Dear Sir:*

I am in receipt of your letter of the 11th instant making inquiry if a justice of the peace or the county judge may issue an injunction restraining the unemployment relief counsel from breaking the Reconstruction Finance Corporation Act of 1932.

In reply, I beg to say that in this State authority for issuing injunctions is vested in the Circuit Courts and not in justices of the peace or county judges.

In this connection, however, I beg to say that since the acts complained of are with reference to a Federal statute and the action of officers under the same, it would appear that the Federal courts would have jurisdiction.

August 2, 1934.

RIPARIAN RIGHTS—CONSTRUCTION OF LAW AS TO
SUBMERGED LANDS*Dear Sir:*

Your letter of the 26th ultimo, addressed to Hon. Nathan Mayo, Commissioner of Agriculture, and reading as follows :

"It is my understanding that the State of Florida does not claim title to submerged lands in Lake Worth where the same have been filled in by the owner of the adjacent uplands and that the State recognizes the title of the owner of the uplands to such filled in land. This was evidently the intent of the Legislature in adopting Section 1774, C. G. L. 1927 (Chapter 8537, Acts 1921).

"We would appreciate it if you would confirm our understanding of the intent of the Act."
has been referred to this office for reply.

Chapter 8537, passed by the Legislature of 1921, appears to be an undertaking to grant riparian rights and submerged and filled in lands to owners of upland whose property extended to the high water mark, but there are so many exceptions to the Act itself it appears that the Legislature accomplished very little in that direction. For instance, Section 9 of the Act provides that the same shall not affect or repeal a number of sections of the Revised General Statutes, included among which is Section 1061 which vests title to practically every class of submerged lands along the coast adjacent to the upland in the Trustees of the Internal Improvement Fund of the State of Florida.

Under this situation, my advice with reference to inquiries along

MISCELLANEOUS

this line is that the upland owner, if he desires submerged lands adjacent to his upland should make application to and purchase the same from the Trustees of the Internal Improvement Fund. I wish to call your attention further to the fact that adverse possession does not run against the State, and also to the repeated rulings of our Supreme Court that lands do not pass as an appurtenance to lands.

August 19, 1933.

SCHOOLS—SENATE RESOLUTION NO. 36 IN RE EXPENSE
COMMITTEE TO INVESTIGATE TEXT BOOKS

Dear Sir:

I am in receipt of a letter from Mr. ———, under date of the 17th inst., in which he advises that you have requested him to secure an opinion from this office relative to Senate Resolution No. 36, Chapter 15858, Acts of 1933, Section 103, Compiled General Laws of the 1933 Legislature, with reference to a Senate Committee to investigate text books used in the public schools of this State.

Three questions are submitted in said letter as follows:

1. "Can a Senate Committee, by resolution appropriate funds for this purpose?"
2. "If so, can this expenditure be charged against the appropriation for the Session of 1935?"
3. "Under the terms of this resolution, is there a limit to the amount the committee may expend in making the investigation?"

Answering the first question, you will note that the resolution is passed by the Senate and not by a *Senate Committee*.

Answering the second question, your attention is called to the General Appropriation Act of 1933, Senate Bill No. 442, Chapter 15858, making an appropriation of \$225,000.00 for Legislative Expenses for the *biennium*. The resolution provides for payment of necessary expenses of said Committee as a part of the legislative expense of the 1935 session of the Florida State Senate.

I do not think that the resolution can bind the 1935 Session of the Legislature, but it appears that the necessary expenses of such committee may be paid under Section 103, Compiled General Laws of Florida, 1927.

Answering the third question, I beg to say that I do not find any limitation upon the expenses of this committee other than that they shall be "necessary" expenses.

MISCELLANEOUS

August 1, 1934.

SPECTACLES—STORE MAY SELL—MAY NOT REPLACE
LENSES AND PARTS*Dear Sir:*

I am in receipt of your letter of the 25th instant, making inquiry if it is legal for a jewelry store without an optometrist to sell the ready-to-wear spectacles over the counter and if you can legally replace broken or otherwise damaged lenses, frames or other parts with new parts.

In reply I beg to say in my opinion stores would be authorized without an optometrist to sell ready-to-wear spectacles over the counter, but I do not think that such store would be authorized to replace broken or otherwise damaged lenses, frames or other parts with new parts.

August 15, 1934.

STATE FUNDS—TRANSFER OF FUNDS FROM ONE FUND TO
ANOTHER AUTHORIZED BY LAW*Dear Sir:*

I am in receipt of your letter of the 14th instant, advising that during the years 1929, 1930 and 1932 there was transferred from the Hotel Commission Fund to the General Revenue Fund \$45,000.00 and during the years of 1930, 1931 and 1932 there was transferred from the General Revenue Fund back to the Hotel Commission Fund \$32,500.00, and that you now have the request for a transfer of \$10,000.00 from the General Revenue Fund back to the Hotel Commission Fund. You make inquiry if this may legally be done.

I am advised from your office that the original transfers from the Hotel Commission Fund to the General Revenue Fund were made under the provisions of Section 2, Chapter 12295, Acts of 1927, being Section 1365, Compiled General Laws of Florida, 1927, reading as follows: '

"Whenever there exists in any fund provided for by law or departmental regulation a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist other funds in the State Treasury which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last mentioned fund, the Governor of the State of Florida may, with the approval of the Comptroller, order a temporary transfer of funds from one fund to another in order to meet temporary deficiencies in particular funds without resorting to the necessity of borrowing money and paying interest thereon: Provided, that the fund from which any money is temporarily transferred shall be repaid the amounts transferred from it as soon as practicable thereafter, same to be done upon order of the Governor and approved by the

MISCELLANEOUS

Comptroller: Provided, that no transfer shall be made from the funds provided for the operations of the State live stock sanitary board."

Under the provisions of said Section, it appears that a re-transfer of \$10,000.00 from the General Revenue Fund to the Hotel Commission Fund would be authorized upon an order of the Governor and approval by the Comptroller.

July 26, 1934.

STATE FUNDS—BILLS FOR ADVERTISING SHOULD BE PAID

Dear Sir:

This refers to your request under date of July twenty-third for my opinion as to whether or not the enclosed bill of the Union Bus Company for charges for carrying various bands and boys to A Century of Progress Exposition at Chicago may be lawfully paid.

This has been determined by the Commissioner of Agriculture and the Florida Commission of A Century of Progress as being a matter of advertising, and in my opinion it is clearly advertising; and it being an advertising item, it is my opinion that the Commissioner of Agriculture has authority to contract such bills and pay the same out of the general inspection, Bureau of Immigration and advertising fund. If the bill sets forth correctly the amount due, then it is my opinion that the same should be paid, provided there are sufficient funds in the inspection, bureau of Immigration and advertising account.

April 17, 1934.

STATE PRISON FUND—CHAPTER 15858, ACTS OF 1933 NOT A
LIMITATION ON SALARIES PAID EMPLOYEES UNDER
SECTION 8615, C. G. L., 1927

Dear Sir:

This is in response to your communication of April 13, 1934.

You advise that Chapter 15858, Acts of 1933, known as the General Appropriation Bill, sets the amount of salaries to be paid employees of the State Prison Farm, and ask whether or not this limitation is to govern you in the drawing of warrants therefor, when taken in connection with Section 8615, Compiled General Laws of 1927.

Said Section 8615 constitutes a continuing appropriation of the proceeds of the three-eighths mill levy for the expenses of the State Prison System, other than the care and maintenance of such convicts as may be delivered to the State Road Department, and provides that all moneys derived from such levy are paid into a special fund known as "State Prison Fund," and provides:

MISCELLANEOUS

"* * * and so much thereof as may be necessary to carry out the provisions of this law is hereby appropriated and is made subject to be expended by the Board of Commissioners of State Institutions for the purposes hereinbefore mentioned, and the Comptroller is hereby authorized and directed to draw his warrant in payment of any such expenses when approved by the Board of Commissioners of State Institutions."

It is my opinion that the 1933 General Appropriation Act is ineffective as a limitation upon the expenditure under the provisions of said Section 8615 of all of the proceeds of the three-eighths of one mill levy.

February 8, 1933.

TOLLS—CLERGYMEN AND PREACHERS EXEMPT

Dear Sir:

Replying to your letter of the 3rd instant, in which you request permit exempting you from the payment of tolls on toll bridges of this State, permit me to say the Attorney General has no authority to issue such permits.

However, Section 2752, Compiled General Laws of 1927, reads as follows:

"Exemption from toll. The militia of the State when actually going or returning from musters or other militia service shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

You will note that this law provides that the exemption of clergymen and preachers of the Gospel from paying toll applies at any of the ferries and bridges in this State.

It is my opinion that this is a legislative mandate and covers every bridge and ferry in the State, regardless of by whom owned or operated. If at any time you are refused the exemption, I suggest that you lay the matter before the State Attorney of your Judicial Circuit, and explain to him that you have been refused this statutory privilege.

May 14, 1934.

TOLLS—WHEN CLERGYMEN AND PREACHERS EXEMPT

Dear Sir:

This refers to your favor of May twelfth, relative to Chapter 2752, Compiled General Laws of Florida, 1927, which, among other things, says:

MISCELLANEOUS

"Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

It is my opinion that this statute is limited to clergymen and preachers, but it is my opinion that a clergyman or preacher is exempt when traveling in his automobile; that is, that his automobile and himself only is exempted, and the automobile is only exempted when he, the clergyman or preacher, is using it as a means of travel to and from the places to which he may wish to go. In other words, it is my opinion that the automobile as such is not exempted from the toll, but only is exempted from the toll because the clergyman or preacher is using it as a means of travel over the bridge or ferry. This would not permit him to carry any other passengers free of toll, nor would it permit him to have the car free from toll if it is carrying commodities or anything for commercial profit. It is my opinion that when the automobile is used by him, it is free from toll, for an automobile is the normal and usual means of travelling in these times.

August 4, 1934.

TRADE CHECKS—WHEN COLLECTIBLE IN CASH

Dear Sir:

On the 31st ult., I wrote you that I did not think you could compel a company to pay you in cash for one of their trade checks containing on the face thereof the words: "Good for \$1.00 in Trade."

This letter was dictated by one of the Assistants in the office, who advises that he failed to locate Sections 3944 to 3946, inclusive, Compiled General Laws of Florida, 1927, which indicate that cash on such trade checks may be recovered after 90 days when such trade checks were issued in payment for labor, redeemable either wholly or partially in goods or merchandise. I quote you the above mentioned Sections as follows and will thank you to kindly return my letter of the 31st ultimo:

3944. "Any person, firm or corporation issuing checks, coupons, punch-outs, tickets, tokens or other device in payment for labor, redeemable either wholly or partially in goods or merchandise, at their or any other place of business, shall, on demand of any legal holder thereof, on or after the ninetieth day succeeding the day of issuance, be liable for the full face value thereof in current money of the United States.

3945. "Any such checks, punch-outs, coupons, tickets, tokens or other device, issued by any person, firm or corporation in payment for labor shall be considered and treated as payable to bearer in current money of the United States, notwithstanding any contrary stipulation or provision which may be therein contained.

3946. "In case of failure of any person, firm or corpora-

MISCELLANEOUS

tion to pay any legal holder of such check, punch-out, ticket, coupon, token or other device issued by them in payment for labor, the full face value thereof in current money of the United States, on or after the ninetieth day succeeding the day of issuance, when so demanded, such holder may immediately bring suit thereon in any court of competent jurisdiction, and, in addition to recovering the full face value thereof, with legal interest from demand, may recover ten per cent., of said amount as attorney's fees in the same suit."

February 21, 1933.

TREASURE TROVE—NO LAW GOVERNING

Dear Sir:

Replying to yours of the 18th instant, permit me to say:

You state some residents of Georgia have requested you to salvage a chest, presumably of pirate origin, sunk in quicksand on the coast of Florida, and you ask to be advised whether or not there is a law in this State governing the disposition of "treasure trove." I have been unable to find a statute governing this subject. However, I will say that if the treasure is located on privately owned property, it would probably belong to the owner thereof. If it is located on State property, or lands owned by the State of Florida, the treasure would belong to the State of Florida. However, it might be possible for the parties interested to enter into an agreement with State authorities to recover the treasure on a percentage basis.

The common law of England, in the absence of a statute, governs in this State, and under the common law of England the recovery of buried or hidden treasure, which had been buried or hidden so long that its owner was unknown, upon discovery was required to be restored to the owner if he could be found, and in case of not finding the owner the property belonged to the king (which in this case, would be the State).

MISCELLANEOUS

"Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

It is my opinion that this statute is limited to clergymen and preachers, but it is my opinion that a clergyman or preacher is exempt when traveling in his automobile; that is, that his automobile and himself only is exempted, and the automobile is only exempted when he, the clergyman or preacher, is using it as a means of travel to and from the places to which he may wish to go. In other words, it is my opinion that the automobile as such is not exempted from the toll, but only is exempted from the toll because the clergyman or preacher is using it as a means of travel over the bridge or ferry. This would not permit him to carry any other passengers free of toll, nor would it permit him to have the car free from toll if it is carrying commodities or anything for commercial profit. It is my opinion that when the automobile is used by him, it is free from toll, for an automobile is the normal and usual means of travelling in these times.

August 4, 1934.

TRADE CHECKS—WHEN COLLECTIBLE IN CASH

Dear Sir:

On the 31st ult., I wrote you that I did not think you could compel a company to pay you in cash for one of their trade checks containing on the face thereof the words: "Good for \$1.00 in Trade."

This letter was dictated by one of the Assistants in the office, who advises that he failed to locate Sections 3944 to 3946, inclusive, Compiled General Laws of Florida, 1927, which indicate that cash on such trade checks may be recovered after 90 days when such trade checks were issued in payment for labor, redeemable either wholly or partially in goods or merchandise. I quote you the above mentioned Sections as follows and will thank you to kindly return my letter of the 31st ultimo:

3944. "Any person, firm or corporation issuing checks, coupons, punch-outs, tickets, tokens or other device in payment for labor, redeemable either wholly or partially in goods or merchandise, at their or any other place of business, shall, on demand of any legal holder thereof, on or after the ninetieth day succeeding the day of issuance, be liable for the full face value thereof in current money of the United States.

3945. "Any such checks, punch-outs, coupons, tickets, tokens or other device, issued by any person, firm or corporation in payment for labor shall be considered and treated as payable to bearer in current money of the United States, notwithstanding any contrary stipulation or provision which may be therein contained.

3946. "In case of failure of any person, firm or corpora-

MISCELLANEOUS

tion to pay any legal holder of such check, punch-out, ticket, coupon, token or other device issued by them in payment for labor, the full face value thereof in current money of the United States, on or after the ninetieth day succeeding the day of issuance, when so demanded, such holder may immediately bring suit thereon in any court of competent jurisdiction, and, in addition to recovering the full face value thereof, with legal interest from demand, may recover ten per cent., of said amount as attorney's fees in the same suit."

February 21, 1933.

TREASURE TROVE—NO LAW GOVERNING

Dear Sir:

Replying to yours of the 18th instant, permit me to say:

You state some residents of Georgia have requested you to salvage a chest, presumably of pirate origin, sunk in quicksand on the coast of Florida, and you ask to be advised whether or not there is a law in this State governing the disposition of "treasure trove." I have been unable to find a statute governing this subject. However, I will say that if the treasure is located on privately owned property, it would probably belong to the owner thereof. If it is located on State property, or lands owned by the State of Florida, the treasure would belong to the State of Florida. However, it might be possible for the parties interested to enter into an agreement with State authorities to recover the treasure on a percentage basis.

The common law of England, in the absence of a statute, governs in this State, and under the common law of England the recovery of buried or hidden treasure, which had been buried or hidden so long that its owner was unknown, upon discovery was required to be restored to the owner if he could be found, and in case of not finding the owner the property belonged to the king (which in this case, would be the State).

September 17, 1934.

ZONING ORDINANCES—LAW APPLICABLE

Dear Sir:

I am in receipt of your letter of the 14th instant, with reference to Zoning Ordinances in effect in the counties of Florida and in administrative districts less than a county, which includes rural territory, and also making inquiry as to ordinances in preparation for counties or rural territory, or ordinances that may have been repealed.

In reply I beg to say I have made a search of the indexes of the Compiled General Laws of Florida and the 1934 Supplement thereto and find only the following references to zones:

1. Sections 3324 and 3325 with reference to zones for the eradication of cattle tick.
 2. Section 1530 (6) Compiled General Laws, 1934 Supplement, with reference to Everglades Drainage District zones for taxation.
- Section 1631 (9), Compiled General Laws, 1934 Supplement, Okeechobee Flood Control District zones.

For your general information I may say various cities and towns have zoning laws of various kinds.

INDEX

Part 2

A

Absentee vote	351
Acting Motor Vehicle Commissioner (See: State officers and employees)	
Ad valorem tax money released when suit dismissed—Mandamus proceedings	188
Administration, State Board of (See: State Board of Administration)	
Administrators, executors, payment of intangible personal property tax	57
Admission tax, licenses	4
Advance commissions of tax assessor, payment following impounding of funds by mandamus	229
Advertising:	
Bills for, should be paid from State funds	638
Cost of delinquent tax list, payment by tax payer	110
Outdoor, documentary stamp tax on leases for	49
Sale of lands for unpaid taxes, rate for	138
Agent, insurance (See: Insurance)	
Agents, typewriter, licenses	16
Agricultural Marketing Board—Cost of buildings and equipment limited	461
Agricultural or horticultural products, motor vehicle license	9
Air craft, traffic inspectors authority to enforce regulations relating to	622
Airplane, State Road Department authorized to purchase	621
Airplanes, gasoline tax	72
Airways, Pan American, tax on purchase of gasoline by	71
Alcohol (See: Intoxicating Liquors):	
Advertisement of alcoholic liquors prohibited	339
Sale of certain beverages containing more than 3.2% alcohol	316
Sale of, lawful for medicinal, scientific and mechanical purposes	337
Aliens, resident, not qualified for appointment as notary public	583
Amusement parks, license	26
Annual tax report of corporations (See: Corporations)	
Annuity, intangible personal property tax on	59
Appearance bonds (See: Sureties)	
Application:	
For certificate of sale for motor vehicle	567
For local option election	374
For motor vehicle license, acknowledgements of county officers on	66
For racing permit (See: Racing Commission)	

Appointment of Circuit Judge	515
Appointment of county officers:	
by Constitution and Statutes	194
Must be duly commissioned; term; powers and duties	195
Subject to suspension by Governor only for causes as provided	
Appropriation for planting and rehabilitating oyster beds	502
Appropriations:	
Appropriation Act of 1933, application of to the State Road Department	388
Auto theft department, does not repeal law in re motor vehicle license commissioner and	380
Balance, unexpended, may be carried forward	381
Conservation department—Consolidation of appropriations	385
Crime, persons wanted for	394
Deficit first year of biennium may be carried into and paid out of appropriation for second year	393
Florida Securities Commission	385
General appropriation does not include cost of administration of certain funds	384
General revenue, all items not otherwise specified to be paid from	386
General revenue, expenditure from, by Live Stock Sanitary Board for employment of veterinarian under legislative authorization	391
General revenue fund, payable from, unless otherwise specified	384
Heads of departments, salaries included	381
Hotel Commission	384
Hotel Commission—Act creating commission takes precedence over General Appropriation Act	387
Items appropriated for govern over erroneous total	383
Jurors, procedure for payment of, when appropriation is insufficient	392
Motor vehicle department	382
Motor vehicle license commission, interpretation in re	382
National Guard	387
National Guard, payroll of members authorized	394
Necessary and regular expenses, use of funds appropriated for salaries for payment of	391
Royal Palm Park, effect on by a prior continuing appropriation for	392
Salaries of certain officers not to conflict with salary fixed by Statute	379
Salaries of heads of departments included	381
Salaries of judges, state attorneys and court reporters; construction in re	381
Soldiers' and Sailors' Home	386
State Board of Health	383
State Prison Farm	382

Page

State Prison system—Limitation by 1933 Appropriation Bill on salaries paid employees in connection with section 8615, Compiled General Laws, 1927	390
State service officers, salaries not authorized to be paid from expense item	386
Arrests for violation motor vehicle license laws, sheriff should make	63
Article 19, proposed amendment to	372
Assessment, bank stock	54
Assessment for taxes of privately owned toll road leased by State Road Department	87
Assessment of intangible personal property (See: Intangible personal property)	
Assessment of stockholders of bank in hands of conservator	299
Assessment, stock (See: Stock assessments)	
Assessment, omitted item intangible personal property	58
Assessor, duty of, to assess intangible personal property (See Tax Assessor)	60
Assignment of mortgages incorporating evidence of indebtedness, documentary stamp tax on	48
Assignment of wages and chattel mortgage in one instrument, documentary stamp tax on	48
Assistant auditor, County Commissioners may employ	211
Assistant State Auditors:	
Governor may remove for cause	601
Can not recover salary after removal	601
Assistant tax assessor, compensation	221
Attendance officer for schools	415
Attorney:	
County Commissioners not authorized to employ for collection defaulted personal property taxes	215
For County Judge's Court, County Commissioners authorized to employ	210
Pilot Commission not authorized to employ	633
State Road Department authorized to employ	615
Special Tax School District may employ with consent of Board of Public Instruction	414
Auctioneer, license	36
Audit of cities and towns, Governor authorized to direct	536
Authority Board County Commissioners to use gasoline tax money under Kanner Bill	74
Auto theft department, appropriation	380
Auto Theft Fund, limitation of expenditures	565
Automobile:	
Hotel Commission may purchase	449
Intangible personal property tax on commercial paper on	51
Radios, license	5
Repair shop, license	5
Bags and sacks, license tax on purchaser	7

	Page
Bakeries, required to pay license tax on each place of business	21
Bakeries, steam, license tax	22

B

Ballot (See: Elections in general)	
In second primary, name of candidate receiving third greatest vote cannot be placed on	361
In special elections (See: Special Elections)	
Banks and Banking:	
Assessment of bank stock for intangible personal property tax ..	54
Assets, power to pledge to secure moneys paid into court	307
Bank deposits, intangible personal property tax on	55
Depository of Public Funds:	
Comptroller to approve bond, banks must comply with State law to act as county depositories	287
Interest should be required to be paid on public funds	285
Security, State law governs as to, to be deposited with Comptroller notwithstanding Federal "Banking Act of 1933"	286
Dividend warrants, cancelled, payment cost of advertising must be deducted from	306
Dividend warrants, which are outstanding and unpaid should be cancelled if all requirements of Section 2, Chapter 15877, Acts of 1933, are complied with	306
Frozen deposits	304
Liquidators:	
Authority of liquidator to compromise stock assessments	296
Authorized to appoint agents and other employees; agents may open bank accounts to protect funds; agents may draw checks on funds to transmit same to State Treasurer	292
Bond of liquidators should be made payable to Comptroller	288
Certificate holder cannot be given preference under freezing order	290
Change of liquidator would not seriously hinder or delay litigation	288
Conservator not prohibited from borrowing money to be used for paying certain percentage to depositors in bank under conservatorship	291
County funds, banks cannot qualify as depository for when bank is in hands of conservator	293
Dividend check, liquidators', payment to guaranty security corporation to be delivered pursuant to order of court	297
Dividends, rights of those filing belated proof of claim to share in prior	295
Freezing order, certificates holder cannot be given preference under	290

	Page
Liquidator's appointment of receiver by Comptroller need not be confirmed by court	289
Necessity of holder of certificate of deposit issued under prior agreement to file proof of claim with	293
Preferred claim, depositor who fails to avail himself of opportunity to withdraw 20% during 90 day limitation does not have, if bank fails at end of that period	290
Proof of claim must be filed with liquidator	294
Receivers' certificates of proof of claim—Lost and duplicate certificates	294
Receivership fund, charge against to cover certain salaries authorized	289
Time for payment of notes in hands of liquidator may be extended by Comptroller if by such extension more moneys can be realized from the notes	292
National Banks:	
Deposits of State funds, authority of national banks to pledge assets to secure	279
Insurance of deposits, status State banks under laws with reference to National Banking Act of 1933 concerning	281
National Bank, power to pledge assets to secure public funds	283
National Bank, qualification as securities dealer	280, 281
Securities, validity of pledge of; and liability of receiver for interest accruing subsequent to receivership	277
Surety bond, not required to pledge assets to qualify as securities dealer but must post	283
Power to pledge assets:	
Bank chartered by State of Florida, power of, to pledge assets	301
Bankruptcy funds cannot be secured by pledge of state bank's assets	303
City funds, power to secure by pledge of assets	302
State banks authorized to pledge assets to secure invested trust funds deposited by state-chartered trust companies	302
Stock Assessments:	
Assessment of stockholders under section 4146, while bank is in hands of conservator, is unlawful	299
Comptroller authorized to approve compromise settlement	299
Stock, common and preferred, constitute capital stock of banks and trust companies	305, 306
Stockholders are liable under the law for the full value of their stock in addition to the amount invested therein for benefit of the creditors of the company	308
Tax anticipation notes and assignment of judgments precluded as security for handling public funds	415
Trust company, foreign, not authorized to serve as executor and trustee under will executed by resident	307

	Page
Bankruptcy, effect of discharge on taxes levied by State, county or municipality	624
Barber examiners (See: State Board of Barber Examiners)	
Barbering service, rendered under transient bureau of FERA	36
Bay County, State Road Department empowered to acquire by condemnation proceedings certain property for bridge purposes	623
Bay County, wet and dry election in	369
"Beating way on train" under jurisdiction of Justice of Peace	270
Beer above 3.2% of alcohol, manufacture of permitted in wet counties	331
Beer license (See: Licenses)	
Beverage Act:	
Branch offices tax—Rooms located in same block or close to branch office used for storage not subject to additional tax	334
City ordinances of Fort Lauderdale requiring distributors to have office of agent in city, is superseded by State Beverage Act	333
Consignment—unlawful for distributor to deliver beer to vendor on consignment	336
Fruit juices, manufacturers of, subject to license tax of \$250.00	336
Inspectors, as many as are necessary to enforce law, and ten supervisors, may be appointed	335
Retail dealer, wholesale distributor may sell to, anywhere in the State. May solicit orders from retail dealers	333
Bicycle side paths	463
Bills for services of surety should be paid when requested by State's attorney and approved by judge	490
Board of Administration (See: State Board of Administration)	
Board of Control, power to require bond of certain employees	466
Board of Commissioners of State Institutions, Captains and guards employed by State Road Department are subject to rules and regulations prescribed by Prison Department and are subject to removal by	547
Board of Commissioners of State Institutions, Captains and guards for convicts working for State Road Department may be dismissed by	547
Board of Commissioners of State Institutions not authorized to sell lands belonging to State Hospital	605
Board of County Commissioners (See: County officers)	
Board of Health:	
Birth certificate—Person actually in attendance must sign	439
Health unit directors, residential qualifications of	435
Mileage and per diem of members of State Board of Health, expenses State officers and employees	438
Narcotic Drug Act—When drug stores may be denied license on ground of immoral character	436
Narcotic Drug Act—When license may be granted	435
Patent medicines and certain drugs may be sold without a registered pharmacist in charge	438

	Page
Tuberculosis Board—Authority of counties in reimbursing State Board for care of patients limited by Section 1313, 1927, C. G. L.	439
Violation of Drug Act is misdemeanor and imprisonment must be in county jail	437
Board of Public Instruction:	
Authority county tax collector to accept certificates of indebtedness and orders of	128
Authorized to insure public buildings in mutual insurance associations	428
Contract of bus driver with, rights of parties under	427
Debts of special tax school district to be approved by	404
Distribution of payment by when funds insufficient to meet all demands shall go first to pay interest, then to pay principal..	425
May employ clerk in office of county superintendent	417
May reject teacher nominees of trustees of special tax school district	410
Purchase of bonds of special tax school district unlawful	406
Purchase of outstanding time warrants of special tax school district with funds of district unlawful	406
Renewal of tax anticipation notes issued by, lawful unless in excess of 80% of anticipated revenue	424
Revision of boundaries of special tax school district may be made by, must be submitted to electors of district affected	411
Shall employ employees in office of county superintendent	418
Should not make bus contracts extending longer than school year	427
Special tax school district may employ attorney with consent of	414
Suit cannot be maintained against for negligence of bus driver; not authorized to use funds for payment of medicine and hospital bills	416
Teachers may not be rejected by, solely on grounds of county residence	411
Unauthorized to reduce millage under amount voted in special tax school districts; certain exceptions	413
Board of Public Welfare—Records relative to children in child caring agencies	462
Boards (See: State Boards)	
Bonds, advisability of suit on county judge's, for game and fish funds lost in defunct bank	254
Bond of clerk circuit court, disposition of funds realized on	249, 251
Bonds:	
Allocation of money collected on defaulting public officer's bonds	195, 200
Authority to sell at par or better Liberty Bonds in a sinking fund account, and use proceeds to purchase at less than par bonds of the issue for which the sinking fund was created	163

	Page
Board has authority to sell Liberty Bonds and invest proceeds in like securities	164
Board not authorized to change form of investment in sinking fund account	180
Board not authorized to pay interest on original issue after being instructed by county to transfer funds to refunding account ..	166
Board of Administration authorized to act under Chapter 14486 ..	187
Board of County Commissioners of Sumter County, purchase by Board of County Commissioners, the provisions of Section 1 of Chapter 15888, Acts of 1933, are mandatory; section 2 of said Act requires a resolution of	177
Bonds and all past due interest coupons, purchase under Kanner Bill	154
Bonds, Board authorized to pay less than par value for	182
Bonds held in sinking fund, Board of Administration not authorized to accept less than par for	181
Bonds, interest is not to be paid on when taken in under the Futch Bill	185
Broward County not authorized to amend certification of indebtedness as to assumed indebtedness which cannot participate in gasoline funds	175
Canadian Government Bonds owned by resident, subject to documentary stamp tax	52
Citrus County, authority of Board of Administration to complete transaction with refunding agency	178
Clerk has no authority to transfer interest received under Futch Bill	186
Clerk not authorized to handle bonds for profit as an independent enterprise	247
Election in special tax school district for issuance	409
Evidence of whether gasoline funds have been budgeted by commissioners to be determined by Board	184
Exchange for refunding bonds by Board not authorized under the law	165
Funds raised but not used for retiring refunding bonds can be used for other lawful purposes, only when governing body abandons refunding program	176
Future receipts, cannot repay from, sum borrowed to pay on interest maturity	173
Gasoline funds, evidence of whether have been budgeted by commissioners to be determined by Board	184
Intangible personal property tax on bonds and notes secured by lien on real or personal property	59
Interest is not to be paid on bond when taken in under the Futch Bill,	185
Interest maturities, payment authorized if sufficient sum remains on hand to answer all writs of mandamus	172

	Page
Investment of funds of special road and bridge district in bonds of another road and bridge district—Price at which such bonds may be purchased for such investment should not be greater than market value	182
Manatee County, Board not authorized to make change contemplated	176
Mandamus on relation of Gillespie and others—Okeechobee County—Payment of bonds out of 1932 ten mill levy required	167
Marion County Board of Administration—Remittances to paying agent	169
Matured coupons, Board cannot purchase as an investment for county or taxing district	183
Matured, partial payment on, may be made pro rata on all matured bonds	408
Method of procedure for determining authority of Board of Administration to change form of securities held by it as statutory trustee	184
Par value, Board not authorized to sell bonds of sinking fund for less than	179
Pinellas County, refunding indebtedness	172
Refunding bonds of special road and bridge district No. 6 in Sumter County may be exchanged for refunding bonds upon proper resolution by County Commissioners	170
Refunding—Chapter 15772 authorized issuance and approval of Board is not necessary	187
Refunding indebtedness, Pinellas County	172
Refunding operations Ocean Shore Improvement District; Payment of compensation	171
Refunding operations St. Johns County	172
Refunding program, House Bill 404, Chapter 15907, Acts 1933 requires the return of funds levied and collected in connection with refunding when program fails	168
Settlements, liability for interest after maturity	429
Sinking fund account, Board authorized to sell securities and reinvest for	169
Sinking fund, Board has no authority to accept less than par value for bonds or coupons in	179
Sinking fund, Board not authorized to sell bonds of, for less than par value	179
Statutory trustee, method of procedure for determining authority of Board of Administration to change form of securities held by it as	184
Bondsmen are not relieved of liability by reason of the fact that defendant served time in lieu of fine	485
Bridge purposes, State Road Department empowered to acquire certain lands in Bay County for	623
Bridges and ferries, National Guard shall have free passage over	570

	Page
Broward County Port Authority, Governor authorized to make appointment for unexpired term of deceased member	624
Broward County Port District, bonds in payment of taxes due	93
Broward County Port District—Unlawful to borrow money to construct precooling plant	625
Budget, 1933-34:	
DeSoto County, cannot operate under Kanner Bill under	159
Martin County, cannot operate under Kanner Bill under	160
Budget Commissions:	
Compensation for other services from county	206
Construction of—Chapter 15938, Acts 1933	204
County Budget—Items of expenditure transferred upon resolution of the Board and approved by Comptroller	201
County Budget—Items of expenditure transferred must not exceed total amount of budget	201
Items of expenditure transferred upon resolution of the Board and approval of Comptroller—County budget	201
Supplemental budget, power to make	202
Salaries, proposed changes in budget relative to	204
Successors not bound by previous contract	206
Building and Loan Associations:	
Federal agency, not necessary for stockholders to ratify purchase of stock in	531
Federal Savings and Loan Associations, purchase of stock in and payment with mortgages held by it, lawful	530
Insolvency, in case of, payments should be made pro rata among stockholders	529
Mandatory, it is, on building and loan associations in cases where the capital is impaired to the extent of 30% to make quarterly distribution to all stockholders of the net cash received by it on a pro rata basis	529
Mortgage, may accept own stock in payment of, in certain cases	530
Mortgages purchased with idle funds are assignable	532
National Housing Act, Not functioning as to new loans because of unpaid withdrawal demands; cannot make loans under the	534
Stock, purchase of in Federal savings and loan association and payment with mortgages held by it, unlawful	530
Stockholders, in case of insolvency payments should be made pro rata among	529
Stockholders in liquidation, inability to locate. Payment should be made to stockholders whose address is known, others to be held until stockholder is located	533
Voluntary liquidation, in process of, Association may function with whatever number of directors remain	533
Building contract between municipality and contractor, documentary stamp tax on	38
Bus contracts extending longer than school year, Board should not make	427

	Page
Bus driver, suit cannot be maintained against Board for negligence of	416
Bus, purchase of, lawful school expense	420

C

Caloosahatchee Improvement District—trustees	626
Campaign expense statement (See: Primary Elections)	
Canadian Government bonds, owned by resident subject to intangible personal property tax	52
Candidate (See: Primary Elections)	
Canning plant for shrimp, license tax	3
Carnivals, amusement parks, license tax	26
Carnivals operating under contract with fair association	12, 31
Cast net (See: Fishing)	
Cemetery companies, approval of dividends	627
Certificate for delinquent taxes (See: Delinquent tax list)	
Chattel mortgage, documentary stamp tax	48
Child caring agencies	462
Chiroprodists	461
Circuit Judges:	
Absence from circuit or sickness or other inability to hear cases, procedure in case of	515
Assignment of circuit judges in case of vacancies by Governor lawful	516
Commission, should issue for full term on appointment of	515
Salaries, under an alleged unconstitutional act may be withheld by Comptroller	516
Cities and towns:	
Comptroller not authorized to require reports of financial affairs	537
County authorities, City not liable for injuries inflicted on county prisoners by	536
Funds of, power of banks to secure by pledge of assets	302
Governor authorized to direct Comptroller to audit the financial department	536
Judgment against—Does not create lien on property of, until levy of execution	539
Mandamus suits against officers, not required to post bond in Pensacola, Interpretation of laws granting additional powers to, and construction of section 10 and Article IX of the Constitution	537
Citizens and Citizenship:	
Dishonorable discharge from U. S. Army does not bar qualifications	542
Domicile and legal home—definition	540
Homestead, definition of—As pertaining to amendment to Article X of the State Constitution relating to exemptions of, from taxation	542

	Page
Indians: Are citizens of State; United States	541
Citrus County, authority of Board of Administration to complete transaction with refunding agency	178
Claim of Stuart Daily News for publication delinquent tax list for year 1931	134
Clerks of Circuit Court:	
Authority to distribute to cities and towns proceeds from collection of delinquent taxes under section 2453, C. G. L.	245
Bond clerk circuit court, disposition of funds realized on ..	249, 251
Bonds for profit or otherwise, clerk circuit court not authorized to handle as an independent enterprise	247
Comptroller authorized to settle account in re State funds lost in robbery	245
Costs and fees—When clerk entitled to and when entitled to card index system	248
County commissioners, provided with certain record books by	242
County seat, clerk of circuit court or deputy shall reside within two miles of the limits of	249
Deposits and fees by retiring clerk, disposition of	247
Deputy clerk circuit court in taking oaths and executing papers should sign the clerk's name by him as deputy	252
Deputy clerk entitled to witness fee	248
Distribution of funds collected on clerk's bond shall be in proportion to the interest, except the debt due the State shall be first satisfied	251
Fees earned during his incumbency, clerk circuit court entitled to ..	246
Fees for delinquent tax statements; searches	246
Fees for keeping record of persons convicted of crimes	251
Fees of clerk—For redemption tax sale certificates as prescribed by law must be collected	243
Fees, recording and filing—Due at time of or prior to rendition of services	251
Futch Bill, no authority under, to accept bonds in redemption of lands where tax certificate is not two years old—Issued upon sale thereof	243
No authority to transfer interest received under Futch Bill ..	186
Not required to file mandate Supreme Court without compensation	489
Redemption tax sale certificates as prescribed by law, fees, of clerk for, must be collected	243
Salaries, method to be used in computing allowance to clerks of circuit court for	250
Searches; fees for delinquent tax statements	246
South Florida Conservancy District tax sale certificates—Fees for cancellation not authorized	242
Tax sale list, record of, and fee of clerk circuit court for same ..	242
Upon presentation, required to record judgments and decrees U. S. Courts	523

	Page
Collateral, intangible personal property tax on	59
Collectibility of gas tax on gasoline purchased by State Road Department or other State Boards	75
Commercial feeding stuff	561
Commercial fertilizers	564
Commercial paper on automobiles, intangible personal property tax	51
Commissioners of deeds	628
Committment of insane person	630
Commodity credit corporation as payee, documentary stamp tax on promissory note made to	38
Comptroller:	
Authority of to cancel tax sale certificate on property acquired by county for park purposes	117
Authorized to cancel tax sale certificate and make refund under section 1009, C. G. L.	116
Authorized to surrender certificate of deposit acquired under provisions of Chapter 15874, Acts 1933	304
Duties in unlawful disbursements	614
Has authority to revoke pension	586
May withhold salaries under an alleged unconstitutional act....	516
Not authorized to change valuations fixed by tax assessor	115
Not authorized to enter into contract for collection gas tax	78
Authorized to certify to States attorney and require collection of defaulting official's bond	198
Compulsory school attendance law applicable to residents only	430
Condemnation proceedings	623
Conservation Department:	
Agents have no authority to enforce traffic regulations	508
Confiscation and sale not authorized by Conservation Department	506
Consolidation of appropriations	385
Fishing (See: Fishing)	
Funds for operation of Geological Department should come from funds coming to Conservation Department	507
Hunting (See: Hunting)	
Judgment incurred in discharge of duty, method of relief from Legislature, member of, may hold position as employee in department which such member assisted in creating	506
Method of relief from judgment incurred in discharge of duty	507
Method of relief from judgment incurred in discharge of duty	506
Conservator of Banks (See: Banks and Banking; Liquidators)	
Constables:	
Constructive mileage, constables charge for, not authorized	272
Fees of constable executing criminal warrant	273
Per diem, constable's, when allowed for attendance on Court—County to pay same	272
Constitution, Declaration of Rights	512, 513
Constitutional amendment, procedure	369
Contractors, license	5

Convicts:

Captains and guards employed by Road Department are subject to rules and regulations prescribed by the Prison Department and are subject to removal by Board of Commissioners as prescribed by law	547
Captains and guards for convicts working for State Road Department shall be hired by Road Department but may be dismissed by Board of State Institutions	546
Commissioners of Agriculture should be served with process, orders, etc., concerning	549
Guard hire—See Brown vs. Lucie County, 153 So. 906, in custody of County Commissioners	549
Guards and captains, surety bonds	483
Road Department has authority to employ guards for road force	548

Corporations:

Acting as surety on bonds must qualify under State law	488
Charter fees on corporation whose capital stock is subject to increase shall be on lesser sum until increase is actually made	552
Deeds, not authorized to execute, until they file report and pay tax required by law	555
Dissolution must be in like manner as domestic corporation	551
Fees of foreign corporation to be paid on full amount of capital to be employed in this State	556
Fishing industry, not authorized to act in	555
Foreign—Not for profit—Must qualify to transact its affairs in Florida	553
Permit from Secretary of State necessary to transact business, though qualified under Securities Act	551
Resident agent, name of, is required to be filed as printed by Incorporation Law—And name contained in annual tax report is not a compliance with same	554
Stock and shares of, intangible personal property tax on	56
"Trust," use of word:	

In name permitted by company authorized to do business in 1924 and restricted not to engage in banking or trust business	553
Not authorized for corporation not exercising trust functions in this State	552
When delinquent under Chapter 14677, Acts 1931	149

County Commissioners:

Attorney for county judge's court, authorized to employ an	210
Auditor, assistant, may employ and discharge	211
Authority to use gas tax money under Kanner Bill	74
Brevard County—Board of Commissioners not authorized to pledge bonds on hand for loan, but authorized to sell same for benefit of maintenance fund	219

	Page
Compromise claims, Board of County Commissioners, not Comptroller, authorized to approve settlements	218
Compromise of judgment on estreated bail bonds, County commissioners authorized to accept offer of	212
Districts, method of changing	214
Estreated bail bonds, County Commissioners authorized to accept offer of compromise of judgment on	212
Expenses of, if provided in budget, may be paid to meeting of State association County Commissioners	211
Inspection of office and records by County Commissioners every three months, law requires	217
Inspectors marks and brands, authorized to recommend	216
Kanner Bill—County Commissioners by resolution should direct the purchase of bonds under same	217
May allot race track funds to county school fund	421
Mileage, salaries	215
Payment of office expense by County Commissioners and furnishing supplies	208
Per diem, \$200.00 per year is maximum amount County Commissioner may receive	212
Personal property tax, County Commissioners not authorized to employ an attorney for collection—Remedy in case of default	215
Photostat machines, County Commissioners have authority under the law to buy, equip and operate	207
Premiums on bonds, payment of by county authorized for County Commissioners and members of school board	216
Prisoners, authorized to buy clothing and medical supplies for	213
Procedure when right to office forfeited	214
Removal for failure to reside in district	209
Salaries, mileage	215
Settlements, Board County Commissioners, not Comptroller, authorized to approve; and can compromise claims that have been reduced to judgment when the same are not collectible	218
Supplies, medical, and clothing for prisoners, authorized to buy	213
County court house—County Commissioners are custodians of	491
County Budget Commission (See: Budget Commission)	
County Judges:	
Bond, advisability of suit on, for Game and Fish funds lost in defunct bank	254
Compensation, law fixing, repealed	255
Estate tax law, fees for making reports under	254
Fee for issuing warrants	256
Fees prescribed by law, County Judge is liable for, even though party incurring cost is insolvent	257
Fees when accused discharged on preliminary hearing	255
Warrants, County Judge's fee for issuing	256
County may rescind action to operate under Kanner Bill	153

	Page
County officers in general:	
Allocation of money collected on defaulting officers bonds	195, 200
Appointment—Subject to suspension by Governor only as provided by Constitution and statutes	194
Civilian Conservation Camp, may hold position in	193
Clerks criminal court and county court not authorized to charge county for audit of books nor dismissing civil cases	198
County agricultural agent—County Commissioners not authorized to pay when not provided for in budget	200
Custodian of registration books, five dollar fee allowed as	193
Defaulting official's bond, Comptroller authorized to certify to States Attorney and require collection	198
Excess fees may be recovered	199
Fees earned may be reported whether collected or not	199
Judgments and tax anticipation notes not approved security	194
Person elected to office held by one, who was appointed to hold same until the qualification of his successor, may proceed to qualify upon receipt of his commission	197
Probation officers; appointment; must be duly commissioned; two year term; powers and duties	195
Reports should be made according to existing law until same is judicially declared unconstitutional	197
Supervisor of registration should have private office	193
County school board, sale of school books by member of, unlawful	426
County sheriffs (See: sheriffs)	
County Superintendent:	
Board of Public Instruction shall employ employees in office of	418
Board of Public Instruction may employ clerk in office of	417
Salary in school budget	430
County tax assessors (See: Tax Assessors)	
County tax collectors (See: Tax Collectors)	
Coupon warrants not acceptable in redemption of land under Futch Bill	85
Crabs, fish dealers' license	28
Credit allowed estate for inheritance taxes paid another State	61

D

Dance halls, license tax	16
Dealers:	
Furniture, license tax	24
Gasoline, (See: Gasoline taxes)	
Hide and fur, license	19
Radio, license tax	18
Real Estate, license tax	15
Death of pensioner where no successor abates pension	586
Defaulting official's bond	198
Deficit first year of biennium may be carried into and paid out of appropriation for second year	393

	Page
Degree of kinship defined under Nepotism Act	580
Delinquent county school taxes	237
Delinquent tax list:	
Authorized to redesignate newspaper to print delinquent tax list	137
"Head notice," Meaning of under section 969, C. G. L. in publication of delinquent tax list	136
Legal advertising—Contract prices to be basis for charge against tax payer	134
Legal advertising, newspapers must be printed within county to qualify for	138
Newspaper—Board County Commissioners authorized to select to print tax list	132
Newspapers must be printed within county to qualify for legal advertising	138
Publication of notice in one newspaper—Authority to correct errors	132
Rate for advertising sale of lands for unpaid taxes	138
Stuart Daily News, claim of, for preparation and publication of delinquent tax list for the year 1931 which was not distributed	134
Delinquent Taxes:	
Authority of clerk to distribute to cities and towns proceeds from collection of delinquent taxes under section 2453, C. G. L.	118
Authority of Comptroller to cancel tax sale certificate upon property acquired by a county for park purposes	117
Comptroller authorized to cancel tax sale certificate and make refund under section 1009, C. G. L.	116
Comptroller not authorized to change valuations fixed by tax assessor	115
Cutting and removing stumps by applying purchase price thereof to delinquent taxes not authorized	103
Date of execution of deed should be date given in notice of application in deed	119
Distribution under Senate Bill 194, Chapter 15918, Acts of 1933, of tax moneys, to begin July 1, 1933	119
Everglades Drainage District—tax certificates; redemption	106
Extending time of payment of 1932 taxes, Chapter 16253, Acts of 1933, affects only taxes payable to tax collector. Interest on tax sale certificate begins on date thereof	112
Indian River County, payment of county and district taxes in, with bonds under Chapter 16482, Acts of 1933 Legislature	102
Interest on tax sale certificates and omitted taxes should be prorated to funds for which taxes levied	119
Last assessed valuation, if lower than regular valuation, to be applied in determining subsequent and omitted taxes in redemption of tax sale certificate; millage of each year to be applied to reduced values	121

	Page
Lien for taxes continues until paid; tax deed does not extinguish prior certificate	114
Omitted property to be assessed	122
Payment of advertising cost required of taxpayer upon delivery of description to newspaper by tax collector	110
Prohibiting the moving of buildings from property upon which there is outstanding a tax sale certificate in the name of the State	103
Redemption of lands from part of taxes represented in a tax sale certificate	108
Redemption of land from tax sale certificate with bonds according to last assessed valuation	114
Redemption of undivided interest in land from tax sale certificate	111
Restraining the removal of buildings from lands upon which taxes are delinquent	107
Speculating by public officers against public policy	112
State lands acquired by foreclosure of tax certificates under Chapter 14572 of 1929 not subject to taxation	120
Tax collector not in contempt of court by advertising and selling certificate covering railroad lands in hands of receivers	104
Tax deed does not extinguish prior certificate; lien for taxes continues until paid	114
Tax redemption money—not authorized to clear tax redemption fund with State Treasurer	107
Tax sale certificate forms	112
Tax sale certificates redeemable upon basis last assessed valuation	108
Democratic Primary (See: Primary Elections)	
Democrats, negroes are not permitted to register as	357
Depository of public funds of county	293
Deposits and fees by retiring clerk, disposition of	247
Deposits of State funds, authority of National banks to pledge assets to secure	279
Deputy clerk circuit court (See: Clerk)	
Deputy sheriff (See: Sheriff)	
Description to be used by County Tax Assessor in assessing land in subdivisions	139
DeSoto County, cannot operate under Kanner Bill under 1933-34 budget	159
Devolution by escheat	144
Disabled American Veterans, construction of law for pugilistic exhibitions	633
Disabled persons peddling medicine exempt from license tax	27
Discount in payment of taxes	141
Dishonorable discharge from U. S. Army does not bar citizenship	542
Disposition of funds realized on bond of clerk circuit court	249
Dissolution foreign corporation	551

	Page
Distribution of moneys racing commission on April 15th	443
Distribution of payment school funds	425
Dividend check, liquidators'	297
Dividend warrants, cancellation	306
Diving bell, taking fish by use of prohibited	502
Documentary Stamp Tax:	
Advertising, outdoor, documentary stamps required on leases for lands and buildings for use in	49
Amount of documentary stamps required on 99 year leases	44
Application of documentary stamp tax law to lease—option	44
Assignment of notes subject to documentary stamp tax act	45
Assignment of wages and chattel mortgage in one instrument; mortgages incorporating evidence of indebtedness	48
Building contract between municipality and building contractor, application of documentary stamp tax act to, whereby city agrees to pay a sum of money	38
Citrus Exchange and affiliates, Florida, applicability of docu- mentary stamp tax to "Uniform crop agreement" used by	38
Commodity credit corporation as payee, applicability of Florida documentary stamp tax act to promissory notes made to	38
Deed of correction, when requires one stamp	50
Lease, written, documentary stamps required on	43
Leases on railroad property subject	47
Liability, documentary stamp tax, of standard form of agree- ment between contractor and owner: Between contractor and subcontractor, and between owner and architect	41
Options not subject	46
Original issue of stock where stock is changed from par value to no par value, documentary stamp tax on	42
Preferred stock issued by a State bank and purchased by the reconstruction finance corporation, applicability of documen- tary stamp tax law to	42
Retain title contract	48
Shares of stock transferred to executor subject to	49
Stock certificate, documentary stamp tax measured by face value of, and not face value of each share	39
Sub-lease, documentary stamps required on	46
Transfers and assignments to trustees as subject to documen- tary stamp tax	45
"Uniform crop agreement" used by Florida Citrus Exchange and affiliants, applicability of documentary stamp tax to	38
Domicile and legal home of citizen, definition	540
Domicile and registration requirements to vote	343
Domicile, how established	572
Dower estate not exempt from taxation	91
Drug Stores:	
Confined to sale of wine for sacramental purposes unless prop- erly licensed	322

	Page
License by State Board of Health	23
Required to procure license to sell intoxicating liquors	323
When may be denied license by State Board of Health	436
Drugs, certain, and patent medicines may be sold without a registered pharmacist in charge	438
Dry territory:	
Importation, transportation and possession of intoxicating liquors unlawful in	314
Manufacture in, unlawful	323
Possession in, for personal use, lawful	323
Shipment into, limited	328

E

Egg classification law	562
Election in special tax school district issuance bonds	409
Elections:	
General:	
Absentee vote, if absent from county under six months qualified elector may cast	351
Ballot, if name written on, cross mark must be made in front of name—Name of nominee only can be printed on ballot	347
Clerks and inspectors, more than one day's compensation allowable to	351
Conviction of crime, right of suffrage and to hold office after	346
County executive committee, recommendation by, for appointment of officer to fill unexpired term of incumbent	345
Domocile and registration requirements to vote	343
Eligible though married to a foreigner to vote	344
Inmates of poor farm entitled to vote	343
Method of delivery of registration books; no compensation provided by law therefor	353
Municipality, holding books open for registration in	349
Precinct election officials—Registration books	350
Precinct in which elected, status of member who moves from, to another county	348
Primary and general elections of 1936, re-registration of voters for	353
Publication of list of qualified electors must be made by supervisor	349
Publication of list of qualified voters may be divided	348
Registration and domicile requirements to vote	343
Registration books:	
Access to and copying from—Later enactments in conflict with prior law	352
Date for closing	347

	Page
Opening and closing of	347
Precinct election officials	350
Registration in election district necessary to vote	345
Registration of elector who is in government service in Washington, D. C.	350
Re-registration of voters for primary and general elections of 1936	353
Secret ballot adopted in 1895	344
Suffrage, right of, and to hold office—After conviction of crime	346
University of Florida students—Qualification of electors to vote	348
Local Option:	
Application of Constitutional amendment in re method of calling	369
Authorized to be held at general election	372
Bay County, wet and dry election in—November general election	369
Intoxicating liquors—Proposed amendment to Article 19	372
Local option election, application for	374
Notice of election to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited in _____ County, Florida	375
Prerequisite for calling	370
Race track elections—Closing date for registration and pay- ment of poll taxes	370
Should be held at same time proposed amendment is voted on	376
Primary:	
Campaign expense statements—When and where filed; First statement	356
Campaign pamphlet and portrait—When and where filed	357
Candidate:	
One only qualifying should be declared party nominee	364
Receiving plurality in first primary, elected	360
When executive Committee may nominate	361
Construction of law governing registration of students of University of Florida	358
Failure to file second campaign expense statements	359
Negroes not permitted to register as Democrats	357
Oath and filing fee—When and where filed	356
Party affiliation, change of	356
Poll Tax:	
Exemption from payment	356
Last day for payment	356
Primary elections, laws governing to be held in June 1934	355
Qualification of elector; oath; penalty for false oath	358
Registration books—When to be kept open	355

	Page
Registration of students of University of Florida	358
Registration, when required	355
Second primary, name of candidate receiving third greatest vote cannot be placed on ballot in	361
Second statements	357
Third statements	357
Special:	
Qualification of delegates to convention; amendment to Federal Constitution	367
Qualification same as to electors as at general election; poll tax must be paid; ballot	365
Registration may be solely in office of supervisor of regis- tration	366
Special tax school district elections, who eligible to vote in	367
Eligibility of school teachers in Florida	402
Eligibility of States attorney to hold office as county solicitor	518
Embalmers and undertakers, license tax	23
Emergency landing fields, State Road Department may maintain	621
Eminent domain, jury has right to view and fix value of right-of- way	620
Eminent domain, State Road Department may exercise right of	618
Employees of Board of Control, bond	466
Employees of Conservation Department	507
Employment under contract not affected by Nepotism law	571, 576
Entertainment or shows, license tax	34
Errors in delinquent tax list	132
Escheat, devolution by	144
Estate tax law, County Judge's fee for reports	254
Estreated bail bonds, compromise	212
Everglades drainage district—tax certificates—redemption	106
Evidence of whether gasoline funds have been budgeted	184
Examination of nurses for permit	452
Examination of optometrists	456
Exceptions to law prohibiting one person to hold more than one State office	611
Excess fees of county officers may be recovered	199
Executors, documentary stamp tax	49
Executors, intangible personal property tax	57
Exemptions:	
Application of law as to exemption from tax of bus used in trans- porting people to and from church	93
Assessment for taxes of privately owned toll road leased by the State Road Department	87
Brewery not exempt from taxation under section 19 of Article IX	93
Carnivals, etc., license tax when operating with fair	12, 31
Cemetery property owned and operated by non-profit corpora- tion	96
Disabled persons peddling medicine, license	27

	Page
Disabled war veterans, license tax	9
Dower estate not exempt from taxation	91
Ex-service men not entitled to exemption unless disabled in war or by misfortune	90
Florida Inland Navigation District, lands not exempt from tax- ation because easements granted to	95
Homestead Exemption Amendment	95
Manufacturer of paper matches not exempt under section 12, Article IX of Constitution	89
Manufacturer of rayon yarns exempt under section 12 of Article IX of Constitution	89
Members of naval militia not exempt	94
Owner of property which is exempt from taxation may claim ex- emption by application to tax assessor or tax collector or to clerk circuit court, while tax sale certificate is owned by the State	92
Peddlers' license	7
Person parking cars outside of race track, from license tax	14
Preachers' relief fund exempt	89
Property leased by educational institution and used solely for educational purposes, not exempt from taxation	88
Property used for public worship but not owned by church organ- ization not exempt from taxation	87
Purchase of sacks and bags, license tax	7
Resident entitled to \$500 exemption from assessed value of per- sonal property	99
Small loan company not exempt from tax under Chapter 14677 and Chapter 15726, Acts 1931	97
Special assessments for benefits, exemption from taxation under proposed amendment to Constitution, Section 7, Article 10, not applicable to	91
Sugar manufacturing plant entitled to exemption from taxes under section 12 of Article IX of State Constitution	97
Tax lien on property for 1931, which property was exempt in 1932 and subsequent years	94
Turpentine and rosin distillers, when exempt from license tax....	98
War veterans not exempt payment insurance qualification fee	25
War veterans not exempt payment license to sell malt, etc.	22
Widows:	
Entitled to certain tax exemption as head of family	99
Exemption of property to the value of \$500.00	100
Of war veterans not exempt from payment of occupational license tax	101
With family depending on her for support entitled to \$500.00 exemption	91
Expenditure from General Revenue by Live Stock Sanitary Board for employment of veterinarian	391

	Page
Expenditures by Railroad Commission	566
Expenditures of State Road Department, how made	616
Expense account of State officials under House Bill 519, Acts 1933	612
Expenses States attorney when directed to another circuit	520
Express, carried by boats, payment gross receipts tax	14
Extending time of payment of 1932 taxes under Chapter 16253, Acts 1933	117
Extradition, sheriff's costs	261

F

Failure of candidate to file second campaign expense statements	359
Fair association, exemption of carnivals operated with	12, 31
Federal:	

Agency, not necessary for stockholders to ratify purchase of stock in	531
Agency, State gasoline inspection tax collectible from	76
Emergency Relief Administration, barber in employ of, rendering service to clients of transient bureau, exempt from license	36
Government, State not authorized to borrow money from	457
Judgments rendered in Florida prior to 1931, lien of	523
Savings and loan associations	530
Statutes control as to migratory birds (See: Hunting)	496

Fees:

Allowed county officer as custodian of registration books	193
And deposits by retiring clerk, disposition of	247
Clerk's for keeping record of persons convicted of crime	251
Clerk's for redemption tax sale certificates must be collected	243
Constable's executing criminal warrant	273
Constable's for committment	266
County Judge is liable for, though party incurring cost is insolvent	257
County Judge's:	
For issuing warrant	256
For reports under estate tax law	254
When accused discharged on preliminary hearing	255
Due tax assessor who has received maximum compensation should be paid into county excess fee fund	223
Earned by county officers may be reported whether collected or not	199
Earned during his incumbency, clerk entitled to	246
Excess, may be recovered from county officer	199
Filing, and oath of candidate	356
Former tax assessor entitled to, for balance of commission due him on tax roll	231
Notary public writing licenses in office tax collector	582
Of foreign corporation to be paid on full amount of capital to be employed in this State	556

	Page
Paid under Securities Act may be returned when no application filed	590
Recording and filing by clerk—Due at time of or prior to rendition of services	251
Sheriff's:	
For committment	266
For feeding prisoners, fraction of a day considered full day	259
For feeding prisoners payable whether prisoners solvent or not	259
Release of prisoner and recommitment under order	262
Transporting persons to industrial school	260
Tax assessor's of Highlands County for assessing special taxes and special tax district taxes	224
Fences, remedy against removal	603
Fermented malt liquors, manufacture in wet counties lawful	332
Ferries, taxable situs	146
Financial Department of cities and towns, Governor authorized to direct audit of	536
Comptroller not authorized to require reports of	537
Fine and cost—bondsmen not relieved of liability because defendant served time in lieu of fine	485
Fine and costs, when not paid	486
Fire control, not authorized to levy tax for	144
Fire insurance company, qualification bonds	473
Firearms, not unlawful to carry in automobile	628
First primary (See: Elections)	
Fishing:	
Appropriation for planting and rehabilitating natural reefs or beds a continuing appropriation	502
Classification of	501
Cast net, use of, prohibited unless in enclosed pit or for catching bait	504
Closed season for shipping mullet 11:00 P. M. December 6, including five days grace	504
Crabbing, fish license required	28
Crabs, horseshoe, no law regulating catching or disposition thereof	50
Dealer not required to pay license on receiving depots	26
Dealer's license	17
Diving bell, taking by use of, prohibited	502
Hillsborough, Manatee, and Pinellas Counties, closed season in, governed by general law and not special law	503
Illegal to store, process or ship during closed season	505
Leasing of water bottoms, validity of application for, pending at time of passage of law	500

	Page
Okaloosa County, Chapter 14511, Acts 1929 controls with reference to mullet in; Chapter 10123, Acts 1925, controls with reference to other counties	505
Shell Fish Commissioner, Statute authorizing search and seize without warrant not applicable to county sheriff	499
State Board of Conservation has exclusive power over leasing water bottoms	499
Transportation into State not prohibited	501
When license tax not required to fish in fresh water	28
When members forestry camp required to pay license	17
Florida Inland Navigation District, lands not exempt from taxation	95
Florida Securities Commission (See: Securities Act)	385
Florida State Boards (See: Boards)	
For hire license tag for 'pick up' trucks not required	66
Foreclosure tax sale certificates	120
Foreign company required to pay motor vehicle license, when	67
Foreign corporations (See: Corporations)	
Intangible personal property tax on	57
Foreign corporations not for profit, qualification	553
Foreign surety companies, appointment of receive	486
Foreign surety companies, personal appearance bonds in U. S. Courts	479
Forms, tax sale certificates	112
Fort Lauderdale, city ordinance superseded by beverage act	33
Fraternal benefit societies	469
Freezing order, rights of certificate holder	290
Frozen deposits	304
Fruit juices, manufacturers required to pay license	21
Fund of special tax school district, use of restricted	403
Fund to which beer license tax should be distributed	329
Fur and hide dealers, license tax	19
Furniture dealers, license required for each store	24
Furs and skins, dealers required to pay license tax	27
Futch Bill:	
Acceptance of bonds under Futch Bill in payment of taxes due Broward County Port District	83
Assessments of lands that have escaped taxation and their relation to the Futch Bill	81
Authority of clerk under, to accept bonds in redemption of lands from 1931 taxes before the tax sale certificate becomes more than two years old	80
Clerk has no authority to transfer interest received under	186
Interest not payable on bond taken under	185
No authority under, to accept bonds in redemption where tax certificate is not two years old	243
Taxes levied by Florida Inland Navigation District not payable under terms Futch Bill	80

Page

Timber and turpentine—Chapter 16252, Acts of 1933, known as the Futch Bill, does not supersede or suspend section 7397 or section 7398, C. G. L., in reference to removing timber or working same for turpentine purposes upon lands against which there is outstanding a tax sale certificate in the hands of the State	84
--	----

G

GAME (See: Hunting)

Gasoline Taxes: (See: Kanner Bill)

Airplanes	72
Application of law to "Distillate," "Tractor fuel," "Gas-oil," or "Marine fuel"	74
Authority of Board of County Commissioners to use gasoline tax money under Kanner Bill	74
Board should hold until directed by county as to its disposition	155
Broward County certificate of indebtedness	175
Collectibility of gasoline tax on gasoline purchased by State Road Department or other State Boards	75
Comptroller not authorized to enter into contract for collection of tax	78
Dealer required to:	
Indicate manufacturer or distributor	73
Pay tax on all gasoline sold in Florida	73
Pay tax on each bulk plant	77
Distribution of tax, application of law in re	76
Drainage districts subject to tax	78
Evidence of whether have been budgeted by commissioners to be determined by the Board	184
Inspection fee collectible from Federal agency	76
Legislature has power to allocate tax	76
Optional with county as to whether should be used to purchase bonds under Kanner Bill	153
"Other special taxing districts," not considered as	71
Pan American Airways, purchase or storage of gasoline by	71
Tax, Sales or storage, when gasoline not subject to	72
Use of moneys derived from, under the Kanner Bill	156
General appropriation does not include cost of administration of certain funds	384
General Elections (See: Elections)	
General Inspection Fund, cost of erecting and equipping plants limited to surplus in	461
General Revenue Fund:	
All items payable from, unless otherwise specified	386
Appropriations payable from, unless otherwise specified	383
Expenditure by Live Stock Sanitary Board from	391

	Page
Transfer of State funds and surplus in Racing Commission fund to	444
When reserve Racing Commission fund transferrable to	446
Geological Department, funds for operation from Conservation fund	57
Governor:	
Authorized to direct Comptroller to audit financial department of cities and towns	536
Authorized to make appointment for unexpired term of deceased member of Broward County Port Authority	624
County officers subject to suspension by, under certain causes ..	194
May appoint honorary game wardens	496
May remove assistant State Auditor for cause	601
Not authorized to extend time payment auto license tag	68
Not authorized to prohibit person to operate motor vehicle	567
Not authorized to suspend auto license tag penalty	67
Not limited to expense account provided in House Bill 519, Acts of 1933	612
Removal of States Attorneys for incompetency	518
School attendance officer appointed by	415
Government service, registration of elector in	350
Gross amount of premiums, insurance companies	19
Gross receipt tax, boats carrying express required to pay	14
Guardian (See: Probate Act)	
Guards (See: Convicts)	
Gulf of Mexico, jurisdiction of State in	264

H

Halifax Hospital tax district	224
Harbor Master, application of law in re duties and expenses	629
Head notice, meaning of, in publication of delinquent tax list	136
Health unit directors, residential qualifications	435
Hendry County road fund	189
Hide and fur dealers license	19
Hillsborough County, fishing in, governed by provisions of general law	503
Home Guard—Reserve, eligible for pensions	587
Homestead:	
Defined as pertaining to Amended Article X of Constitution	542
Entries, tax roll	143
Exemption amendment	95
Horticultural supplies, use of motor vehicle for transporting	9
Hospital:	
Bills, Board cannot be sued for, when incurred by negligence of school bus driver	416
Lawful to use and possess intoxicating liquors	327
Superintendents not required to be registered nurses	452
Hotel Commission:	
Act creating Commission	387

	Page
Apartment house defined	
Appropriation for	384
Law does not preclude purchase of automobiles by	449
Premium of bonds of inspectors, Commissioner	
Required to collect license taxes	20
Hunting:	
Federal Statutes control as to migratory birds	496
Honorary game wardens, may appoint when Governor deems necessary	496
Hunting in closed territory, application of law in re	495
Lake Okeechobee within boundary of Palm Beach County	498
Penalty for violating closed territory	496
Husband, non-resident, of teacher, ineffective under Nepotism Act..	398
Husband's qualification does not qualify wife under Nepotism Act ..	575

I

Ice Cream, (See: Inspection Laws)	
Ice manufacturer, license tax on retail depots	35
Illegal to store, process, or ship fish during closed season	505
Illuminating oils, license tax on wholesale dealers in	8
Incompetency, Governor authorized to remove States Attorney for	518
Indians are citizens of State; United States	541
Indian River County, payment county and district taxes with bonds	102
Indictments and Information:	
Constitution, State, Amended Section 10, Declaration of Rights	513
Constitution, State, Amended Section 10, Declaration of Rights relating to indictments and information; Costs of witnesses ...	512
Information cannot be filed against persons for crimes com- mitted prior to midnight of December 31, 1934	511
Industrial school, sheriff's fees for transporting persons to	260
Inheritance or estate taxes:	
Commissioner of revenue not authorized to require county judge to make certain report	61
Credit allowed estate for taxes paid to another State	61
Injunction proper remedy for removal of fences from lands	603
Inmates of poor farm entitled to vote in elections	343
Insane person, procedure for committment	630
Insolvency of building and loan associations, payment pro rata to stockholders	529
Insolvent surety companies, securities delivered to receiver	487
Inspection fee, gasoline, collectible from Federal agency	76
Inspection Laws:	
Automobile, authorized to purchase under certain conditions	563
Board has authority to control prices under control act of milk sold to Government Hospital	563
City ordinance not abrogated by Milk Board Law	560
Commercial feeding stuff sold in bags cannot be held to be in bulk	561

	Page
Commercial fertilizers—Form of label or stamp showing payment of Inspection Fee	564
Egg classification law—With reference to advertising—Classification must be plain	562
Ice cream, all products used in manufacture of, except fruits, nuts and flavoring, must be pasteurized	559
Milk—Prices fixed by Board govern	561
Milk required to be pasteurized when used in ice cream, etc.	560
Inspection of office and records by County Commissioners every three months	217
Inspection of public records, any citizen authorized to	588
Inspectors and clerks, elections, compensation	351
Inspectors of marks and brands	216
Insurance:	
Benevolent mutual benefit association—Certificate assignable; payable in cash only by insurer	471
Buildings in special tax school district	409
Burial companies not authorized to do insurance business	475
Cancellation surety bond not authorized by company	472
Compensation to agent on business procured directly by company or other agent is not unlawful	474
Contract which affords indemnity or security against loss for a stipulated consideration is insurance	475
County Commissioners must pass resolution before county can levy tax	469
Fire Insurance Company—Qualification bonds under section 6242 Compiled General Laws 1927—Stipulation for cancellation by surety	473
Fraternal benefit societies—Certificate in certain form not authorized	469
Gross premium tax	19
Licensing and examining agents or solicitors	472
Life Insurance Company reinsuring obligations of another company and putting up deposit with State Treasurer releases bond of first company—Surrender of deposit	471
Of deposits, status State banks under laws reference to National Banking Act of 1933	281
Of public building in mutual insurance companies	428
Of school buildings in certain companies unlawful	426
Policies or bonds covering property of U. S. Government, State law inapplicable to	472
State commission has authority to surrender security upon merger and qualification of companies	477
Surety Companies (See: Surety)	
Intangible personal property taxes:	
Administrators, executors	57
Annuity	59
Assessment of bank stock	54

	Page
Assessment of intangible personal property taxes upon commercial paper on automobiles, which is assigned to the bank	51
Assessment of intangible personal property taxes upon promissory notes in the hands of the trustee and bonds in the hands of a purchaser, which were issued by the trustee and are secured by the promissory notes	51
Assessor, duty of, to make assessment	60
Assessor to be allowed commission for assessing	225
Bank deposits	55
Basis of assessment	58
Bonds and notes secured by a lien on real estate or personal property	59
Bonds issued by Canadian Government and owned by resident of Florida, subject to tax	52
Bonds under Class A	55
Class B	55
Class C	56
Collateral	59
Commissions allowed for tax collector for collecting	234
Corporations, stock and shares	56
Deceased person—during tax year	59
Deduction in arriving at value of bank stock	54
Deduction in arriving at value of shares and stock of corporation	58
Distinction between intangibles of bank and shares of stock issued by bank	53
Foreign corporations	57
Information from banks for stock assessments	54
Installment notes	56
Insurance:	
Foreign companies	59
Policies, fire	59
Policy, life	59
Location of property	59
National banks, assessment of	53
National bank stock	54
Notes and bonds secured by a lien on real estate or personal property	59
Oath with return	60
Omitted items, back assessments	58
Principal place of business, corporation must make return at	57
Repeal of section 907, Compiled General Laws of Florida, 1927..	58
Return, corporation must make	56
Return, oath with	60
Rule for bonds	55
Shares of stock	57
State banks, assessment of	53
State bank stock	53

	Page
Stock of corporation owned by one person	58
Trustees	58
Values of stock, bonds, mortgages, notes, leases	56
Winter residents	56
Interest:	
Bearing notes, payment to teachers for past due salary with, unauthorized	401
Coupons, purchase under Kanner Act	154
Is not to be paid on bond when taken in under the Futch Bill....	185
Maturity, cannot repay from future receipts sum borrowed to pay on (Bonds)	173
On tax sale certificates and omitted taxes should be pro-rated to funds for which taxes levied	119
Received under Futch Bill, clerk has no authority to trans- fer	186
Should be required to be paid on public funds in banks	285
Intoxicating liquors in general:	
Advertisement of alcoholic liquors prohibited	
Alcohol for medicinal, scientific, mechanical purposes, sale of lawful	337
Beer and beverages (See: Beverages)	
Beverages, malt and vinous—Amount of municipal licenses	331
Constitutional amendment, proposed, to Article XIX—Time of taking effect	318
Counties maintain status in effect December 31, 1918, unless election held	313
Distributors, Only one State and county license required for, under Chapter 15884, Laws 1933; License for each precinct required under laws in effect December 31, 1918	330
Drug stores confined to sale of wine for sacramental purposes unless licensed under Chapter 15884, Laws 1933	322
Drug stores required to procure license in order to sell	323
Dry territory, possession in, for personal use lawful	325
Fermented malt liquors, manufacture of, in wet counties lawful	332
Fund to which license tax money should be distributed	329
Hospitals, lawful to receive and possess for use of patients,.....	327
Intoxicating qualities, law prevailing as to proof of	314
License:	
And permits, application of law in re obtaining	320
And permits required	319
Required of corporations maintaining warehouses for dis- tribution	324
Tax money, fund to which should be distributed	329
Local option election (See: Elections)	
Local option election—Payment of poll tax prerequisite to voting —Registration book furnished to inspectors by supervisor.....	326
Manufacture in dry counties prohibited	323
Manufacturer's license tax	21
Personal use, possession in dry territory for, lawful	325

	Page
Possession, importation and transportation unlawful in dry territory	314
Proposed amendment to Article 19, Constitution	372
Pullman Company, sale on cars operated by, unlawful	327
Sale in wet counties of malt or vinous beverages in excess of 3.2% alcohol lawful	326
Sale in wet county in precincts voting dry permitted	329
Sale of certain beverages containing more than 3.2% alcohol	316
Securities, warehouse receipts not classified as, under Chapter 14899, Acts 1931	321
Shipment into wet counties allowed	325
Shipment into wet county permitted; shipment into dry county limited	328
Wet counties, manufacture of beer above 3.2% of alcohol permitted in	331
Investment in sinking fund account for bonds, Board not authorized to change form of	180
Investment of funds of special road and bridge district in bonds of another road and bridge district	182
Items of expenditure transferred in the county budget	201
Items of expenditure transferred must not exceed total amount of county budget	201

J

Jewelry stores, optometrists permitted to practice while employees of	456
Job printing office, license tax	6
Judges, State attorneys and court reporters, construction of law in re salaries of (See: Circuit Judges; County Judges)	381
Judgment:	
Against municipality does not create lien on property of until levy of execution	539
Against surety company, retention bonds on deposit with State Treasurer to satisfy	479
Incurred by conservation agent in discharge of duty, method of relief	506
Rendered in State Court on holidays; city courts	557
Junk dealer's license tax	7
Jurisdiction of the State over Gulf of Mexico	264
Jurors:	
Mileage paid to and from court	525
Precedure for payment of, when appropriation is insufficient	392
Right to view and fix value of right-of-way in eminent domain	620
Justices of the Peace:	
Attendance on court, Justice of the Peace authorized to designate officer for	269
"Beating way on train" under jurisdiction of	270
Coroner, duty as	269

	Page
Coroner's inquest, duties Justice of the Peace, County Judge and Constables in connection with	270
County school board, may also be member of	268
Disqualified, when; case should be transferred to another justice or to County Judge	268
Liquor laws, no jurisdiction offenses against; authorized to appoint constable only under certain conditions	269
Must surrender office in court house at command of county commissioners	491
Juvenile jurisdiction does not depend on citizenship—No jurisdiction over criminal offenses	525
Juveniles, delinquent—Sheriff authorized to make committments, not probation officer	631

K

Kanner Bill:

Authority Board of County Commissioners to use gasoline tax money under	74
Board should hold gasoline money until directed by county as to its disposition	155
County Commissioners should direct by resolution purchase of bonds under	217
County may rescind action to operate under Kanner Bill	158
DeSoto County cannot operate under Kanner Bill under 1933-34 budget	159
Gasoline money, optional with county as to whether should be used to purchase bonds under Paragraph D	153
Gasoline tax, use under Chapter 15891, Acts of 1933, known as the Kanner Bill, of moneys derived from	156
Martin County cannot operate under Kanner Bill under 1933-34 budget	160
Notice from Board of County Commissioners necessary	158
Purchase of judgment on matured bonds authorized under	153
Purchase under provision of this Act should be for the bond and all past due interest coupons	154
Special road and bridge district, not applicable to whose affairs are not managed and controlled by Board of County Commissioners	159
Kinship, degree of, defined under Nepotism Act	580

L

Lake Okeechobee within boundary of Palm Beach County	498
Lands not exempt from taxation because easement granted to Florida Inland Navigation District	95
Law of probate repealed by 1933 Act	521
Leases:	
Gas or oil, exempt under Securities Act	591, 592, 596

	Page
Lands and buildings for outdoor advertising, documentary stamp tax on	49
Lease-option, documentary stamp tax on	44
May be unwritten for less than one year	631
Ninety-nine year, documentary stamp tax on	44
On railroad property subject to documentary stamp tax	47
Written, documentary stamp tax on	43
Leasing water bottoms of State	500
Legal:	
Advertising, contract prices to be basis for charge against tax payer	134
Advertising, newspapers must be printed within county to qualify for	138
Home and domicile—Definition as to citizenship	540
Notices, when newspaper entitled to public after change of name and ownership	581
Legislature:	
Member of, may hold position as employee of department which such member assisted in creating	507
Power to allocate gasoline tax	76
Liberty Bonds:	
Authority to sell at par or better, in a sinking fund account and use proceeds to purchase at less than par bonds of the issues for which the sinking fund was created	163
Board has authority to sell and invest proceeds in like securities	164
Licensee race track not required to pay tax on pass given to telegraph operator	447
Licenses:	
Admission tax, amount required race track licensee	4
Agents and solicitors of insurance companies	472
Amusement parks, carnivals	26
Auctioneer, public, auctioneer's license required when person employed in business of	36
Automobile radios, license tax on radio dealers selling	11
Automobile repair shop, license tax not required of person operating outside of municipality	5
Bakeries required to pay on each place of business	21
Bakeries, steam, required to pay \$10	22
Barbering service, person on FERA and rendering to clients of transient bureau exempt from license requirements under Chapter 14650, Acts 1931	36
Beer:	
City or town authorized to impose license tax on manufacturers and distributors of, only when place of business is maintained therein	30
License tax required of manufacturer or distributor	30
Warehousing for duly licensed wholesalers or distributors....	31

	Page
Beer Bill, liability of sales representative or broker to license tax under provisions of S. B. 427	31
Beverages containing not more than 3.2% alcohol for personal use, no license tax required to manufacture	29
Beverages, malt and vinous, tax collectors entitled to fees for collecting taxes	30
Boats carrying express required to pay gross receipts tax	14
Bond and license tax required of tax collection agency	3
Brokers in stocks and bonds	20
Building contractors who do not have established places of business	5
Cities and towns required to file schedule of license taxes	16
Crabs, fish dealer's license required	28
Dance halls	16
Disabled persons peddling medicine are exempt	27
Drug stores with registered pharmacist required to pay license to State Board of Health	23
Embalmers and undertakers	23
Entertainments or shows, application of law in re	34
Exemption:	
Disabled war veterans, from licence tax limit bona fide resident of State	9
From peddler's license in section 1279(60) C. G. L., 1934 Supplement	7
Or carnivals and other businesses when operating under contract with fair association	12, 31
Persons parking cars outside race tracks	14
Purchaser of sacks and bags	7
Fish dealers	17
Not required to pay license on receiving depots	26
Fishing, when license tax not required in fresh water	28
Furniture dealers must have State license for each store operated	24
Furs and skins, dealers required to pay license tax	27
Hide and fur dealers	19
Hotel Commission required to collect	20
Ice manufacturer maintaining retail depots required to pay	35
Intoxicating liquors, manufacturer required to pay \$250	21
Junk dealer's license	7
License tax and bond required of tax collection agency	3
Manufacturer fruit juices required to pay \$250	21
Manufacturer of frozen desserts who sells only through own retail stores classified as retailer	10
Milk Law—Re: application free license	35
Motor vehicles not deemed "For Hire" when used in transporting horticultural or agricultural products or supplies	9
Multigraphing office, license required of job printing office not applicable to	6
Municipal license sale of malt and vinous beverages	331

	Page
Notary public, no additional fee for writing in office of tax collector	582
Oils, illuminating or lubricating, license tax on wholesale dealers in—Section 1210, C. G. L.	8
Optician	19
Optometrists, State Board not authorized to issue license to, without examination	456
Parking cars outside race tracks, not required for	14
Peddlers of merchandise	36
Physicians and surgeons, qualifications necessary to obtain license	460
Piano tuners employed by a music store, license required of	12
Race track, amount of admission tax required of licensee	4
Racing Commission not authorized to issue licenses	25
Radio dealers	18
Railroads required to pay on trackage	8
Real estate dealers making occasional sales required to pay	15
Shrimp canning plant	3
Steamship companies required to have license for each boat selling beverages	29
Tax collectors not entitled to fees for collecting license under Chapter 15634, Acts 1931	235
Trained nurse	18
Typewriter agents	16
Vending machines	18
War veterans:	
Not exempt from payment of insurance qualification tax or fee	25
Not exempt in re sale of malt, etc.	22
Western Union Telegraph Company employees not subject to license tax: Race track	33
Widows of World War veterans not exempt from payment	101
Lien for taxes continues until paid; tax deed does not extinguish prior certificate	114
Life Insurance (See: Insurance)	
Liquidators (See: Banks and Banking)	
Liquor laws, Justice of Peace has no jurisdiction	269
Live Stock Sanitary Board:	
Not prohibited from purchasing motor vehicles	569
State not authorized to borrow money from Federal Government	457
Tick eradication—Board only authorized to expend total of \$250,000	457
Loans:	
Cannot be made under National Housing Act by building and loan associations	534
From trust fund created by Chapter 16114, Acts 1933, when authorized	421

	Page
To Brevard County, Commissioners not authorized to pledge bonds on hand as security for	219
Local option elections (See: Elections)	
Location of property for purpose of intangible personal property tax	59
Lotteries—Punch board employed with sale of merchandise prohibited	631

M

Maintenance fund of Brevard County	219
Maintenance of buildings and insurance of special tax school district payable from funds of district	409
Malt and vinous beverages:	
Amount of municipal license tax	331
Tax collectors entitled to fees for collecting license (See: Beverage Act)	30
Manatee County, Board not authorized to make change contemplated (bonds)	176
Manatee, Pinellas, and Hillsborough Counties, closed fishing season in, governed by general law	503
Mandamus:	
Ad valorem tax money released when suit dismissed	188
Concurrent suits in two jurisdictions on same coupons	188
On relation of Gillespie and others—Okeechobee County	167
Payment of interest maturities of bonds authorized if sufficient sum remains on hand to answer all writs	172
Suits against officers of municipality	538
Manufacture of intoxicating liquors in dry counties prohibited	323
Manufacturers of:	
Frozen desserts selling through own retail stores classified as retailers	10
Fruit juices, subject to license tax	336
Ice, maintaining retail depots required to pay license	35
Paper matches not exempt under section 12, Article IX, Constitution	89
Rayon yarns exempt under section 12, Article IX, Constitution	89
Marion County Board of Administration; remittances to paying agent	169
Marketing Board, agricultural—Cost of equipment, etc., from General Inspection Fund	461
Married woman: (See: Nepotism Act)	
Not prohibited from teaching under Nepotism Act	402
Martin County cannot operate under Kanner Bill under 1933-34 budget	160
Matured coupons, Board cannot purchase as an investment for county or other taxing district	183
Maximum amount of traveling expense of State officials	611
Medicinal and mechanical purposes, sale of alcohol for legal	337
Members of Naval Militia not exempt from poll tax	94

	Page
Memorial Day not a legal holiday in Florida	558
Merchandise, peddler's license	36
Merger of insurance companies, disposition of securities	477
Method of:	
Delivery of registration books	353
Issuing salary warrant of State officer when deceased	613
Procedure for determining authority of Board of Administration to change form of securities held by it as statutory trustee	184
Relief from judgment incurred by Conservation Agent in dis- charge of duty	506
Migratory birds, Federal statutes control hunting	496
Mileage:	
And per diem of members of State Board of Health	438
County Commissioners	215
Jurors	525
Sheriff's, in serving more than one process at same time and place	263
Milk (See: Inspection Laws)	
Millage in special tax school districts	413
Minor not authorized to hold office of Notary Public	583
Miscellaneous:	
Appropriations	383
Conservation regulations	506
Mortgages:	
Building and loan association may accept own stock in payment of	530
Documentary stamp tax	48
Purchased with idle funds of building and loan association are assignable	532
Motor vehicle; Taxes:	
Arrests for violations Motor Vehicle Laws should be made by sheriffs	63
Application for certificate not required to contain terms of sale	567
Appropriation for Motor Vehicle Department	382
Auto theft fund—Limitation of expenditures—Disposition bal- ance—Unaffected by general appropriation bill	565
Commissioner authorized to fix amount of bond of tax col- lectors in handling license tags	240
Corporation liable for tax only on route over public streets, roads or highways	69
Counties cannot enforce speed law greater than State law	566
County officials taking acknowledgements on applications for license	66
For Hire license tag for "Pick up" trucks not required	66
Foreign company is required to pay license, when	67
Governor not authorized to:	
Extend time for payment of license tax	68
Prohibit person to operate—Suggested procedure	567

	Page
Suspend the twenty-five cents penalty on license tax	67
Interpretation of law in re license commission	382
Live Stock Sanitary Board not prohibited from purchasing	569
Maximum width permitted, seven feet	565
Not deemed "For hire" when transporting agricultural or horti- cultural products or supplies.....	9
Private roads, auto transportation corporation not liable for mileage traveled on	69
Rented by State Road Department, application of Chapter 16184,	618
Sales agencies subject to personal property tax on stock on hand January 1st	64
Service charge may be charged Federal, State, county or muni- cipal governments for number plates	68
State Road Department not prohibited to purchase	617
Multigraphing office exempt from job printer's license tax	6
Municipal elections, holding books open for registration	349
Music store, license required of piano tuners employed by	12
Mutual Insurance companies (See: Insurance)	
Authority of Board to insure public buildings of special tax school district in	428

N

Narcotic Drug Act:

When drug stores may be denied license on ground of immoral character	436
When license may be granted by Board of Health	436
National Banks: (See: Banks and Banking)	
As securities dealer, qualification	594
Intangible personal property tax assessment	53
Intangible personal property tax on stock of	54
National Guard:	
Accidents involving life and property from operations of motor vehicles is not a State liability	570
Appropriations	387
Bridges and ferries, shall have free passage over	570
Payroll of members authorized	394
National Housing Act	534
Naturopathy defined	463
Naval Militia, members not exempt from poll tax	94
Necessary and regular expenses, use of funds appropriated for salaries for	391
Negroes not permitted to register as Democrats	357
Nepotism:	
Applicable to public employee's wife's half sister's son	576
Board of public instruction, inapplicable to applicant whose great-grandmother was also aunt of member of	576
Civil law method used in computing degrees of relationship	577
Civil rule used in arriving at degree of relationship	574

	Page
County officer's father's half brother's child, inapplicable to ..	571
County officers limited to employment of one relative under law even though unsalaried	578
County superintendents and trustees not prohibited from recommending relatives as school teachers under law	575
Degree of kinship defined	580
Domocile, how established	572
Employment under contract not affected by law	571
Fee officers and their employees, law applicable to	577
Husband's qualification does not qualify wife	575
Ineffective:	
As to wife of half uncle by marriage previously deceased of school board member's wife	577
To employment under contract made prior to effective date of Act	576
Married woman related in second degree to husband's sister's husband	573
May employ a man who is a son of wife's father's half sister	572
Officers, State and county, prohibited from employing relatives within fourth degree	574
Penalty for violation	571
Prohibits:	
Employment of more than one relative of Board as a whole	578
Relationship within fourth degree with the party employing such person	573
School teachers, law applies to	572
Newspaper:	
Authority of Board to re-designate to print delinquent tax list	137
Board of County Commissioners authorized to select to print tax list	132
Must be printed within county to qualify for legal advertising	138
Publication of delinquent tax list, authority to correct errors	132
State wide publication defined	581
Subscriptions, Racing Commission authorized to pay	441
When entitled to publish legal notices after change of name and ownership	581
Ninety-nine year lease, documentary stamp tax on	44
Nomination of:	
Teachers of special tax school district, trustees may reject	410
Trustees of special tax school district	412
Notes, assignment of, subject to documentary stamp tax	45
Notice of:	
Application in tax deed	119
Special election (See: Elections)	
Nurses:	
Examination, special permit to applicant for	452
Hospital superintendents—Not required to be "Registered Nurses"	452
Registration fee of \$10 prevails	453

	Page
Trained, license tax	18
O	
Oath:	
And filing fee of candidate in primary election	356, 358
With intangible personal property tax return	60
Occupational license taxes (See: Licenses)	
Ocean Shore Improvement District refunding operations	171
Office expense, payment by County Commissioners	208
Officers:	
Allocation of money collected on bonds of	195
Of municipality, not required to post bond in mandamus suits against	538
Of State and county, prohibited from employing relatives within the fourth degree	574
Salaries of, not to conflict with salaries fixed by statute	379
Official seal of County Board of Public Instruction	417
Oil leases, Security Act	596
Oils, illuminating or lubricating, license tax on wholesalers	8
Okaloosa County:	
Fishing regulations as to mullet	505
School Board, certificates of indebtedness of	129
Okeechobee County:	
Commissions due tax assessor under mandamus writ	222
Payment of bonds out of 1932 levy	167
Old soldier's and sailor's home, appropriation	386
Omitted:	
Items, intangible personal property tax roll, back assessment	58
Property, to be assessed	122
Taxes, interest on, should be pro-rated to funds for which taxes levied	119
Optician, license tax	19
Options not subject to documentary stamp tax	46
Optometrists:	
Permitted to practice while employees of jewelry stores, etc.	456
State Board not authorized to issue license to practice without examination	456
Orange County Budget Commission may control levy for all funds....	147
Original issue of stock changed from par to no par value, documen- tary stamp tax on	42
Orphan—May be committed by County Judge to corporation organ- ized for purpose of caring for such children	632

P

Palm Beach County:

Lake Okeechobee within boundary of	498
Signature of tax collector of	143

	Page
Pan American Airways, tax on gasoline purchased or stored by	71
Paper matches, manufacturers not exempt from taxation under Article IX, Constitution	89
Par value, Board not authorized to sell bonds of sinking fund for less than	179
Partial payment on matured bond may be made pro rata on all matured bonds of the district	408
Party:	
Executive Committee—Candidate receiving plurality in first primary elected	360
Nominee, one candidate only qualifying, should be declared	364
Pass given telegraph operator, Racing Commission	441
Patent medicines and certain drugs may be sold without a registered pharmacist in charge	438
Payment:	
Advertising cost by delinquent tax payer	110
Certain taxes in Indian River County with bonds	102
Office expense by County Commissioners	208
Voucher of State Road Department for purchase of airplane authorized	621
Payroll of members of National Guard authorized	394
Peddler:	
License, exemption	7
Of merchandise, license tax	36
Penalty:	
For false oath; qualification of elector, (See: Elections)	358
For violating Nepotism Law	571
For violating territory closed for hunting	496
On auto license tags, Governor not authorized to suspend	67
Pensacola:	
Interpretation of law granting additional powers to	537
School bonds	460
Pensions:	
Balance due at death of pensioner	586
Beneficiary, effect of death of, under Relief Act	585
Comptroller has authority to revoke	586
Death of pensioner where no one is left to succeed pension, abates it	586
Reserve Companies—Home Guard—Eligible for pensions	587
School teachers not entitled to, if they have property or income	397
Per diem:	
Constable	272
County Commissioners	212
Permit:	
And license to sell intoxicating liquors	319
How obtained	320
Of race track:	
Authority to amend	442

	Page
Not transferrable	442
Time for making application for	448
Of Secretary of State necessary for corporation to do business in Florida	551
Personal bond, surety bond for two years cannot be terminated upon giving of	484
Personal property, resident entitled to \$500 tax exemption	99
Personal property tax:	
County Commissioners not authorized to employ attorney to collect	215
On stock of automobile sales agency	64
Petition to annex additional territory to school district	405
Pharmacist, registered, drug store employing must pay license to State Board of Health	27
Photostat machines, County Commissioners have authority to buy	207
Physicians and surgeons, qualifications to obtain license	460
Piano tuners, license	12
Pilot commissioners, employment of attorney unauthorized	633
Pinellas County:	
Manatee and Hillsborough Counties, closed fishing season in, governed by general law	503
Refunding indebtedness	172
Podiatry Board	464
Policy (See: Insurance)	
Political party affiliation, change of	356
(Also See: Elections)	
Poll Tax:	
Exemption from payment	356
Last day for payment	356
Special elections	365
Portrait and campaign pamphlet of candidate for office	357
Possession, importation and transportation of intoxicating liquors in dry territory unlawful	319
Possession of intoxicating liquors in dry territory for personal use lawful	325
Power of bank to pledge assets (See: Banks and Banking)	
Preacher's relief fund exempt from taxation	89
Precincts:	
Election (See: Elections)	
Voting dry, sale of intoxicating liquors permitted in	329
Precooling plant	625
Preferred claim (bank liquidation)	290
Preferred stock of State bank and purchased by Reconstruction Finance Corporation, applicability of documentary stamp tax law	42
Preliminary hearing, fee of county judge when accused discharged	255
Premium on bond:	
Hotel Commissioner and inspectors	450

	Page
Of employees of Racing Commission	440
Of employees of State Road Department	615
Of State officers	610
Payment of, authorized by county for Commissioners and School Board members	216
Premiums received in Florida, gross receipts on insurance	19
Prerequisite for calling local option election	370
Primary election (See: Elections)	
Prison Department, captains and guards hired by State Road Department, subject to regulations of;	547
Prison fund of State, salaries of employees	638
Prisoners:	
County Commissioners authorized to buy clothing and medical supplies for	213
Law governing fees for feeding, contemplates that a fraction of a day shall be paid for as a full day	259
Rate allowed sheriff for feeding	267
Sheriff's fee for feeding should be paid by County whether prisoners are solvent or not	259
Private roads, auto transportation company not liable to State for tax on mileage traveled over	69
Probate Act of 1933:	
Claims, provisions for filing are mandatory	522
Guardian, necessary for, to advertise before making turpentine lease	521
Law, 1923, repealed by 1933 Act	521
Probation officers	195
Procedure:	
When femme sole becomes femme covert prior to expiration of her commission as Notary Public	582
When right of County officer to office forfeited	214
Process:	
Sheriff entitled to commissions upon sale of property under	261
Sheriff entitled to one mileage charge in serving more than one at same time and place	263
Proclamation of Holiday for banks by Governor unauthorized	558
Prohibiting the moving of buildings from property upon which there is outstanding a State tax certificate	103
Promissory notes:	
Intangible personal property tax on	51
Made to commodity credit corporation as payee, applicability of documentary stamp tax act to	42
Proof of claim (defunct banks):	
Must be filed with liquidator	294
Receivers' certificates of—Lost and duplicate certificates	294
Rights of those filing belated, to share in prior dividends	295

	Page
Property:	
In Hands of Court Receiver:	
Personal property in receivership not subject to lower valuation	127
Sale of personal property in the hands of a court receiver for non-payment of State and county taxes	124
Tax sales covering railroad lands in hands of receiver	125
Leased by educational association and used solely for educational purposes, not exempt from taxation	88
Omitted in tax roll, to be assessed	122
Used for public worship but not owned by church, not exempt from taxes	88
Public:	
Auctioneer's license	36
Buildings, Board authorized to insure in mutual insurance associations	428
Funds:	
Interest should be paid when deposited in bank	285
Power National banks to pledge assets to secure	283
Policy, public officers speculating against	112
Records:	
Citizens authorized to inspect	588
Public entitled to obtain information—Charge not authorized	589
Public officials should furnish certified copies of their records to U. S. Veterans' Bureau without cost	588
Publication of:	
List of qualified voters (See: Elections)	
Notice in one newspaper—authority to correct errors (delinquent tax list)	132
Pugilistic exhibitions	633
Pullman Company, sale of intoxicating liquors on cars unlawful	327
Punch board employed with sale of merchandise prohibited	631
Pupils (See: Schools)	
Purchase of:	
Bonds of special tax school district by Board of Public Instruction, unlawful	407
Judgment on matured bonds authorized under the Kanner Bill	153
Outstanding time warrants of Board of Public Instruction with special tax school district funds, unlawful	406
Under Kanner Bill, should be for the bonds and all past due interest coupons	154

Q

Qualification of:	
Delegates to convention	367

Electors:

Oath; penalty for false oath; primary election (Also see: Elections)	358
In special election	365
To vote—University of Florida students	348
National bank as security dealer	594
Trustee of special tax school district	413

Qualified:

Electors:

Of special tax school district	409
Publication of list of	349
Voters, publication of list of	348
Quarantine by State Plant Board	465

R

Race Track:

Amount of admission tax	4
County Commissioners may allot funds to county school funds	441
Elections, closing date for registration and payment of poll taxes	370
Licensee of, not required to pay tax on Western Union employees	3
No license required for parking cars outside of	14

Racing Commission:

Application for racing permit, time of making	448
Comptroller has discretionary authority to refuse to pay salaries other than at monthly intervals	444
Distribution of moneys can only be made on or about April 15th	443
Expense accounts of State officers, Chapter 16184, Acts 1933 limiting etc., includes employees of Racing Commission	440
General Revenue Fund, when reserve fund transferable to	446
License, occupational, State Racing Commission may refuse to issue to persons connected with race track	447
Licensee not required to pay tax on pass given to telegraph operator	441
Newspaper subscriptions, authorized to pay	441
Not authorized to issue licenses	25

Permit:

Authority to amend	442
Not transferable	442
Premiums on bonds of employees of Commission, payment of, a legitimate expense	440
Salaries and expenses of, not payable except upon voucher signed by secretary and chairman	446
Transfer of State funds—Transfer of surplus in Racing Commission fund to General fund	444

Radio dealers selling automobile radios, license tax	11
--	----

Railroad:

Assessment Board—authorized to employ clerk	459
---	-----

	Page
Company required to make return to Comptroller	142
Lands in hands of receiver, tax certificates on	104
Property leases subject to documentary stamp tax	47
Required to pay license tax on trackage	8
Taxes, tax collector not entitled to commission for collecting when delinquent	233
Rate for advertising sale of lands for unpaid taxes (See also: Delin- quent Tax List)	138
Rayon yarns, manufacturer of, exempt from taxation	89
Real estate subdivisions—surveys, plats and maps required by law....	634
Receipts may be issued for payment of only school taxes	145
Receiver (See: Banks and Banking; Sureties)	
Reconstruction Finance Corporation:	
Documentary stamp tax on preferred stock of bank purchased by	42
Federal Courts have jurisdiction	635
Record:	
Books of Clerk of Circuit Court provided by County Commis- sioners	242
Of persons convicted of crime, fees of Clerk for keeping	251
Redemption of: (See: Delinquent Taxes)	
Lands from:	
1931 taxes under Futch Bill	80
Part of taxes represented in a tax sale certificate	108
Tax sale certificates with bonds	114
Undivided interest in land from tax sale certificate	111
Refunding Bonds (See: Bonds)	
Registration: (See: Elections)	
And domicile requirements to vote	343
Books:	
Access to	352
Opening and closing of	347
Precinct election officials	350
When kept open	355
In election district necessary to vote	345
In municipality, holding books open for	349
May be solely in office of Superintendent of Registration	366
Nurses, fee	453
Of elector who is in Government service in Washington	350
Of students of University of Florida	358
Relationship (See: Nepotism)	
Relief Act, effect of death of beneficiary under	585
Removal of County Commissioners for failure to reside in district	209
Rental to employees of State Road Department for use of personal motor vehicles	817
Repair shop, automobile, no license required when operated outside limits of municipality	5
Repeal of Section 907, C. G. L. 1927	58
Reports of county officers should be made according to existing law	197

	Page
Representative or Senator, when prohibited from holding State office	614
Re-registration of voters for primary and general elections of 1936	353
Resident:	
Agent of corporation	554
Entitled to \$500 exemption of personal property	99
Residential qualifications of Health Unit director	435
Restoration of certificate of barber	454
Restraining the removal of buildings from lands upon which taxes are delinquent	107
Retailers of beer, who may sell to, under license as	333
Retain title contract, documentary stamp tax on	48
Return of intangible personal property, oath	60
Riparian rights, construction of law as to submerged lands	635
Road Department (See: State Road Department)	
Road fund of Hendry County	189
Robbery, Comptroller authorized to settle account in re State funds lost in	245
Roll, 1933, tax collector not authorized to accept payment of 1932 taxes on value as shown by	145
Route of auto transportation company, tax on	69
Royal Palm Park, appropriation	392
Rule of bonds, intangible personal property taxes	55

S

Sacks and bags, purchaser of, license tax	7
Salaries:	
And mileage of County Commissioners	215
Circuit Judges under alleged unconstitutional act	516
Clerks of Circuit Court	250
Heads of departments, appropriation	381
Judges, State Attorneys and Court reporters, appropriation	381
Proposed changes in budget relative to	204
State service officers, not authorized to be paid from expense item	386
Use of funds appropriated for, for payment of necessary and regular expense	391
Sale of:	
Intoxicating liquors in wet counties	316, 326
In precincts voting dry, permitted	329
Personal property in hands of Court receiver for non-payment of taxes	124
Sales:	
Agencies subject to personal property tax on cars on hand	64
Representative or broker, license tax under Beer Bill	31
Schedule of license tax required to be filed by cities and towns	16

	Page
Schools:	
Attendance officer must be elected by the people or appointed by the Governor	415
Budget not changed by payment of salaries of County Superintendents	430
Busses, purchase of, lawful	420
Compulsory attendance law applicable to citizens of State only	430
County Board of Public Instruction (See: Board of Public Instruction)	
County Commissioners may allot race track funds to county school fund	421
Distribution of payment of funds by School Board when funds are insufficient to meet all demands	425
Funds accruing during current year are subject only to teacher's salary and transportation incurred during that year	420
Loans from trust fund created by Chapter 16114, Acts 1933, when authorized	421
Payment of premiums on bonds of members of Board	216
Sale of books by member of School Board unlawful	426
Special Tax School Districts:	
Attorney, may employ with consent of the Board of Public Instruction	414
Board of Public Instruction: (See Also: General Index)	
May reject teacher nominees of trustees of special tax school district	410
Purchase of outstanding time warrants of, with special tax school district funds, unlawful	406
Unauthorized to reduce millage under amount voted in special tax school districts; certain exceptions	413
Boundaries, Revision of may be made by Board of Public Instruction but must be submitted to electors of district affected	411
Debts to be approved by Board of Public Instruction of county	404
District trustee, qualifications of; Must be qualified elector; Full pardon removes disqualification	413
Elections,	367
For purpose of voting in issuance of bonds	409
Funds:	
Cannot be used to pay bills of another district unless all funds are placed in one account	403
Not authorized to be used for transporting pupils into another school district	403
Illegal for trustees to make contract for transporting pupils	405
Insurance and maintenance of buildings payable from special tax school district's funds even though title is vested in Board of Administration	409
Nomination of trustees may be made by trustees of	412

	Page
Partial payment on matured bond may be made pro rata on all matured bonds	408
Petition to annex additional territory to any district, one-fourth of voters of each district necessary to sign	405
Purchase of:	
Bonds of special tax school district by Board of Public Instruction, unlawful	407
Outstanding time warrants of Board of Public Instruction with special tax school district funds, unlawful ..	406
Sinking fund of, may be used to purchase bonds of another district but not bonds of same district	408
State Board of Education may remove trustee of special tax school district for cause	414
Teachers may not be rejected by the Board solely on the ground of County residence	411
Voting	404
Taxes:	
Authority of County Tax Collector to accept certificates of indebtedness and orders of Board of Public Instruction	128
"Bonds" or "Time warrants," tax anticipation notes not classed as	130
Commissions for collecting to be paid by County Commissioners	236
1934 certificates of indebtedness receivable by tax collector in payment of	238
Okaloosa County School Board, certain certificates of indebtedness issued by	129
Receipts may be issued solely for payment of	145
School taxes, payment with certificate of indebtedness	128
Teachers:	
Board may employ teacher whose husband lives out of State if husband claims Florida as his residence	398
Certificates of indebtedness or interest bearing notes, payment of, for past due salaries unauthorized	401
County not liable for interest on past due salaries	401
Governed by Nepotism Act	575
Married women not prohibited from teaching	402
Must be bona fide residents of Florida for two years next prior to time of employment to be eligible	402
Not entitled to pension if they have property or income	397
Salaries may be paid from funds accruing during school year but received by county after close of school year	397
Scientific purposes, sale of alcohol for, lawful	337
Searches by Clerk; fees for delinquent tax statements	246
Second Primary, name of candidate receiving third greatest vote cannot be placed on ballot in	361
Statement of candidate	357
Secret ballot adopted in 1895	344

	Page
Secretary of State, permit from, necessary to transact business though corporation qualified under Securities Act	551
Securities Act (Blue Sky):	
Bonds dealing in securities as defined therein, should qualify	596
Fee may be returned when no formal application filed	590
Loan evidenced by receipt granting proportionate interest in an agreement and to be repaid from earnings of transaction sub- ject to Securities Act	593
Oil leases, not applicable when owner of, sells or assigns his en- tire rights in area covered or part thereof	596
Qualification National Bank as securities dealer	594
Resale, person purchasing large block of securities for purpose of, must qualify	592
Sale of:	
Interim of temporary certificate under supervision of	591
Oil or mineral royalties under certain conditions not within operation of this Act	590
Reserved interest in gas or oil lease defined as an exempt transaction	591
Tax collecting agency should qualify when buying and selling bonds though only for payment of taxes	593
Whole interest in gas or oil lease exempt	592
Senate Resolution No. 36, re expense committee to investigate text books	634
Service charge may be charged Federal, State, county or municipal governments for motor vehicle license tags	68
Settlements, County Commissioners authorized to make	218
Shares of Stock:	
Intangible personal property tax on	57
Issued by bank, intangible personal property tax on	53
Transferred to executor subject to documentary stamp tax	49
Shell Fish Commissioners (See: Conservation)	
Sheriffs:	
Bond, deputy sheriff authorized to accept	266
Calhoun County, sheriff appointment to fill vacancy	265
Commissions upon sale of property under process, entitled to	261
Committment fees, sheriffs and constables	266
Extradition cases, sheriff's costs—Constructive railroad fare not allowable	261
Fees for release of prisoner and recommittment under order	262
Gulf of Mexico, State jurisdiction of water of, extending three leagues from shore	264
Industrial school, sheriff's fees transporting persons to, to be actual expense and must be paid by county	260
Mileage charge in serving more than one process at same time and place	263

	Page
Prisoners:	
Law governing fees for feeding contemplates that a fraction of a day shall be paid for as a full day	259
Rate allowed sheriff for feeding	267
Sheriff's fees for feeding should be paid by county regardless of whether prisoners are solvent or not	259
Should make arrests for violation motor vehicle laws	63
Shipment of intoxicating liquors in wet counties allowed	325
Into dry counties, limited	328
Shows and entertainment, application of license tax laws	34
Shrimp canning plant, license tax	3
Signature of tax collector of Palm Beach County	143
Sinking fund account:	
Board:	
Authorized to sell securities and reinvest for	169
Not authorized to change form of investment in	180
Not authorized to sell bonds of, for less than par	179
Skins and furs, dealer's license tax	27
Slot machines:	
Not authorized to seize when merely stored	597
Search and seizure; when unlawful to operate	597
Small loan company not exempt from tax under 1931 Act	97
Small Loan Law:	
Salary or wages, earned, corporation purchasing, comes within scope of Small Loan Law	598
Vault charges unlawful where added to interest rate, amounts to more than 3½% per month	598
Soldiers and sailors home appropriation	386
South Florida Conservancy District tax sale certificates—cancellation	242
Special:	
Assessments for benefits, Homestead Exemption not applicable to Elections (See: Elections)	91
Road and Bridge Districts:	
Commissions of tax assessors	226
Kanner Bill not applicable to certain	159
Number 6 in Sumter County	170
Tax collector entitled to commissions for collecting taxes, only when law authorizes same	237
Tax school district elections	367
Spectacles, sale of by store	637
Speculating by public officers against public policy	112
Speed law of counties	566
St. Johns County, refunding operations	172
State:	
Association County Commissioners, expense of members	211
Attorney:	
Authority of Governor to remove for incompetency	518

	Page
Duties, after removal of cause against Federal officers from State court to Federal court	519
Eligible to hold office of County Solicitor	518
Entitled to expenses when directed by Governor to go to some other circuit	520
Auditors:	
Assistant State Auditor cannot recover salary after removal by Governor	601
Governor may remove Assistant State Auditors for cause	601
Banks: (See: Banks and Banking)	
Assessment of intangible personal property tax of	53
Authorized to pledge assets to secure invested trust funds	302
Stock, intangible personal property tax on	53
Board of:	
Barber Examiners:	
Not authorized to change law	454
Restoration of certificate lapsed more than one year	454
Conservation (See: Conservation)	
Education:	
County Budget Commission of Orange County may control levy for all funds subject to review by	147
May accept refunding issue in lieu of original bond issue	161
May accept refunding bonds of City of Pensacola in lieu of bonds now owned by State school fund	460
Health: (See: Board of Health)	
Appropriation for	380, 383
Drug stores with registered pharmacists required to pay license tax	23
Medical Examiners	460
Optometrists (See: Optometrists)	
Public Instruction (See: Board of Public Instruction)	
Boards, collectibility of gas tax from	71
Funds:	
Bills for advertising should be paid from	638
Transfer	637
Hospital (See: State Lands)	
Insurance Commission	477
Lands:	
Acquired under Chapter 14572, Acts 1929, not subject to taxation	120
Board Commissioners of State Institutions not authorized to sell lands belonging to State Hospital	605
Injunction property remedy against removal fences, etc., from	603
Tax deed to property, no trespass where person holds	603
Trustees of Internal Improvement Fund:	
Authority to sell or lease shell, phosphate, etc., in or under any of the sovereignty lands of the State	604

	Page
May lease island in St. Johns River not owned by another State agency	607
Live Stock Sanitary Board (See: Live Stock Sanitary Board)	
Officers and employees:	
"Acting Motor Vehicle Commissioner;" When Senator or Representative prohibited from holding State office; Duties of Comptroller and Treasurer in unlawful disbursements	614
Expense accounts of State officials under House Bill 519, Acts 1933, do not apply to Governor and his Cabinet	612
Maximum amount of traveling expenses for subsistence for State officials is \$4.50 per day	611
Method of issuing warrant when deceased	613
No person permitted to hold more than one State office; certain exceptions	611
State:	
Boards, members of, cannot hold two state offices	614
Not authorized to pay premiums on bonds for officials and employees unless specific or implied authority be given by legislation	610
Office, whether or not an individual may hold more than one at the same time	610
Superintendent of Public Instruction entitled to back salary which he failed to receive during fiscal year	612
Plant Board—Quarantine area	465
Prison:	
Farm, appropriation	382
System, limitation of 1933 Appropriation Bill on salaries of employees	390
Road Department, collectibility of gas tax from	71
Road Department:	
Airplane:	
Authorized to purchase	619
May purchase; may maintain emergency landing fields; limitation	621
Application of 1933 Appropriation Act	388
Authorized to employ an attorney and fix compensation	615
Bay County, Empowered to acquire by condemnation proceedings and to convey by warranty deed certain property for bridge purposes in	623
Bond, may require of employees and pay premium therefor	615
Cars, personal, May pay certain rental to employees using for State business	617
Collectibility of gas tax from	71
Eminent domain, may exercise right of, under certain conditions	618
Expenditures made upon vouchers issued by secretary and countersigned by chairman lawful	616

	Page
Jury has right to view and fix value of right-of-way in eminent domain	620
Motor vehicles:	
Rented, application of Chapter 16184 (Subsistence and mileage limitations) to	618
State Road Department not prohibited to purchase	617
Traffic inspectors—authority to enforce regulations relating to aircraft	622
Transportation of poles, lumber, etc., over highways after dark prohibited	617
Treasurer—reinsurance (Also see: Sureties)	471
Statewide publication by newspaper defined	581
Steam bakeries, license tax	22
Steamship companies required to have license for each boat selling beverages	29
Steamships and ferries, taxable situs of	146
Stock:	
And bonds, broker's license tax	20
And shares of corporation, intangible personal property tax on Assessments:	56
Assessment of stockholders under section 4146, while bank is in hands of conservator is unlawful	299
Comptroller authorized to approve compromise settlement	299
Certificate, documentary stamp tax measured by face value	39
Common and preferred constitute capital stock of banks 305,	306
Of building loan associations (See: Building and Loan Associations)	
Of corporation owned by one person	58
Stockholders of banks are liable under the law for full value of stock	308
Storage or purchase of gasoline by Pan American Airways, tax	71
Suart Daily News, certain claim of	134
Sub-lease, documentary stamps required on	46
Subdivisions, description to be used for assessing land in	139
Submerged lands, construction of law as to—Riparian rights	635
Successors of budget commission not bound by previous contract	206
Suffrage, right of, and to hold office after conviction of crime	346
Sugar manufacturing plant exempt from taxes	97
Superintendents of hospitals not required to be registered nurses	452
Supervisors:	
And inspectors under Beverage Act	335
Of registration	349
Registration may be solely in office of, in special elections ..	366
Should have private office	193
Supplemental budget, power of budget commission to make	202
Supplies for prisoners	213

	Page
Sureties:	
Bills for services should be paid when requested by States Attorney and approved by Judge	490
Blanket assumption of all legal liabilities of defunct company by solvent company is sufficient compliance with law	483
Bonds, law authorizes surrender of, by State Treasurer in return for receiver's certificate	485
Bondsmen are not relieved of liability by reason of the fact that defendant served time in lieu of fine—Fine and cost	485
Cancellation of bond by surety of an indefinite and contingent liability as to future accruing liability, is permitted	482
Convict guards and captains may have group bonds	483
Corporations acting as surety on bond must qualify under State law	488
Fine and costs—When same are not paid execution shall issue by the clerk as if there had been judgment at law	486
Foreign surety companies:	
Appointment of receiver—does not affect section 6294, Compiled General Laws, 1927	486
Compliance with section 6290 to 6308, C. G. L. 1927, in writing personal appearance bonds in U. S. Courts	479
Insolvent surety company, securities should be delivered to receiver appointed by Circuit Court of Leon County 480, 481,	487
Liberty Bonds in lieu of—should be released and returned to depositor	480
Personal bond, surety bond for two years cannot be terminated upon giving of	484
State Treasurer:	
Not authorized to act as pledgee of collateral by a bank to secure a deposit by Clerk Court in such bank	488
Retention bonds on deposit with, sufficient to satisfy unpaid final judgment	479
Surety on tax collector's bond	240

T

Tax Anticipation Notes:	
And assignments of judgments precluded as security for handling public funds	194, 415
Issued by board of public instruction may be renewed when	424
Tax assessors:	
Advance commissions, following impounding of funds by mandamus	229
Amount of monthly advances to county assessor by board of county commissioners	225
Assistant—Compensation	221

	Page
Commissions due assessors and collectors upon certain State tax levies for 1933	229
Commissions for assessing special tax school district taxes under Ch. 15048, Acts 1931	228
Commissions for assessing lands which were sold to State for non-payment of taxes for preceding year	227
Commissions for assessing special tax school district taxes in certain counties	221
Commissions for assessing intangible personal property	225
Comptroller not authorized to change valuations fixed by	115
Duty to assess intangible personal property	60
Fees due tax assessor who has received maximum compensation should be paid into county excess fee fund	223
Fees—former tax assessor entitled to for balance of commissions due him on tax roll	231
Halifax Hospital District, commissions for assessing taxes for, under Ch. 15794, Acts 1931	224
Okeechobee County, commissions due tax assessor for assessing taxes pursuant to mandamus writ	222
Salaries and commissions of	230
Tax collection agency should qualify as securities dealer, when	593
Tax collectors:	
Bond of collector, surety	240
Certificate of indebtedness receivable in payment of delinquent county school taxes	237
Certificate of indebtedness receivable in payment of 1934 school taxes	238
Commissions allowed for collecting intangible personal property taxes	234
Commissions for collecting delinquent railroad taxes	233
Commissions for collecting countywide school taxes to be paid by county commissioners	236
Commissions, not entitled to under Sec. 1033, 1934, C. G. L., when property sold	233
Commissions, 10% on first \$4000 goes to office of tax collector	235
Entitled to commissions for assessing special tax school district taxes only when law authorized same	237
Entitled to fees for collecting beverage taxes	30
Licenses, not entitled to fees for collecting under Ch. 15634, Acts of 1931	235
Motor Vehicle Commissioner authorized to fix amount of bond for in handling license tags	240
Not authorized to accept payment of 1932 taxes on value as shown by 1933 roll	145
Not in contempt of court by advertising and selling certificate covering railroad lands in hands of receivers	104
Notary public entitled to no additional fee for writing licenses in office of collector	582

	Page
Tax certificate, time of payment to tax collector of fifteen cents for issuing	234
Tax deed does not extinguish prior certificate	114
Tax lien on property for 1931 taxes, which property was exempt in 1932 and subsequent years	94
Tax list, (See: Delinquent tax list):	
Record of and fee of clerk for same	242
Tax redemption money—not authorized to clear tax redemption fund with State Treasurer	107
Tax roll:	
Board of county commissioners not authorized to make blanket reduction in	140
1933, collector not authorized to accept payment of 1932 taxes on value as shown by	145
Tax sale certificates:	
Forms	112
Redeemable upon basis of last assessed valuation	107
Redemption of lands from part of taxes represented in	108
(Also, see: Delinquent taxes)	
Taxation and Taxes, (Look under the specific form of tax in general index)	
Taxpayer entitled to discount when	141
Teachers, (See: School teachers)	
Text books for schools—expense of Senate Committee to investigate	636
Third statement of candidate, (See: Elections)	
Tick eradication (See: Live Stock Sanitary Board)	
Timber and Turpentine rights	84
Time for payment of notes in hands of liquidator may be extended by Comptroller	292
Time warrants of board of public instruction	406
Toll road leased by State Road Department	87
Tolls, clergymen and preachers exempt	639
Trackage of railroad, license tax on	8
Trade checks, when collectible in cash	64
Traffic inspectors—authority to enforce air-craft regulations	622
Traffic regulations enforceable by	508
Trained nurses, license tax	18
Transfer of State funds from one fund to another authorized	637
Transfer of surplus in racing commission fund to general fund	444
Transfers and assignments to trustees subject to documentary stamp tax	45
Transportation of fish into State not prohibited	501
Transportation of intoxicating liquors unlawful into dry territory	314
Transportation of poles, lumber, etc., over highways after dark prohibited	617
Traveling expenses of State officers and employees	611
Treasurer (See: State Treasurer)	
Trust companies and banks, capital stock of	305, 306

	Page
Trust company, foreign, not authorized to serve as executor when	307
Trust funds deposited by State chartered trust companies	302
"Trust," use of word in name of corporation	552, 553
Trustee, intangible personal property tax	58
Trustees of Caloosahatchee Improvement District	626
Trustees of Internal Improvement Fund:	
Have authority to sell lease on properties of certain lands	604
May lease island in St. Johns River	607
Trustees of special tax school district, State Board of Education may remove for cause	414
Tuberculosis board	439
Turpentine lease, necessary for guardian to advertise before making	521

U

Undertakers and embalmers, license tax	23
Undivided interest in land, redemption of, from tax sale certificate ..	111
Uniform crop agreement, documentary stamp tax on	38
United States:	
Army, dishonorable discharge from, does not bar citizenship qualifications	542
Courts:	
Clerks State Circuit Court upon presentation required to record judgments and decrees of	523
Foreign surety companies must comply with sections 6290- 6308, C. G. L. 1927, in writing personal appearance bonds in	479
Officials must pay service charge for motor vehicle license plates	68
Veteran's Bureau, public officials should furnish their records to, without cost	588
University of Florida:	
Construction of law governing registration of students in pri- mary elections	358
Qualifications of electors to vote	348

V

Vacancies of Circuit Judgeships	516
Vacancy in office of Sheriff of Calhoun County	265
Valuations fixed by tax assessor, Comptroller not authorized to change	115
Values of stock, bonds, mortgages, notes, leases, for purpose of in- tangible personal property tax assessment	56
Vault charges under Small Loan Law	598
Vending machines	18
Veterans:	
Disabled, exemption from license taxes limited to bona fide residents of State	9
Widows of, not exempt from payment occupational license tax	101

	Page
Veterinarian, employment of, by Live Stock Sanitary Board	391
Vinous and malt beverages (See: Beverage Act)	
Violations:	
Motor Vehicle laws; arrests should be made by sheriff	63
Drug Act	437
Voluntary liquidation of building and loan association	533
Vote (See: Elections)	
Voting in special tax school district	404
One-fourth of the voters of the district necessary to sign petition to annex additional territory	405
Vouchers issued by secretary and countersigned by chairman of State Road Department	616

W

Wages or salary, corporation purchasing comes within scope of Small Loan Law	598
War Veterans:	
Disabled, exemption from license tax limited	9
Not exempt:	
From payment of insurance qualification tax or fee	25
In re sale of malt	22
Warehouse:	
For distribution of intoxicating liquors, license required of cor- poration maintaining	24
Receipts not classified as securities under Security Act	324
Warehousing beer for duly licensed wholesalers or distributors	31
Warrants:	
County Judge's fee for issuing	256
Of deceased State officer or employees, how issued	613
Warranty deed, State Road Department empowered to acquire by condemnation proceedings	623
Water bottoms of State:	
State Board of Conservation has exclusive power to lease	499
Validity of application for lease pending at time of passage of the law	500
Western Union Telegraph employees, licensees of race track not re- quired to pay license tax on	3, 33
Wet Counties:	
Manufacture of:	
Beer above 3.2% of alcohol permitted	331
Fermented malt liquors in, lawful	332
Sale in, in precincts voting dry permitted	329
Sale of malt and vinous beverages in, lawful	326
Shipment into allowed	325, 328
Whole interest in gas or oil lease exempt under Securities Act	592
Wholesale:	
Dealers in illuminating and lubricating oils, license tax	8

	Page
Distributor of beer may sell to retail dealers anywhere in the State	333
Widow:	
Entitled to certain tax exemption as head of family	99
Of war veteran not exempt from occupational license tax	101
With family dependent upon her for support, entitled to \$500 exemption	91, 100
Width of vehicle permitted under law	565
Wine:	
Drug stores confined to sale of, for sacramental purposes unless licensed under the Beverage Act	322
Manufacturer's license	324
Winter resident's intangible personal property tax	56
Witness fee, deputy clerk entitled to	248
Witnesses, cost of	512

Index

Part 2

INDEX TO THE CONSTITUTION AND LAWS OF FLORIDA CONSTRUED OR CITED IN OPINIONS OF 1933 AND 1934.

Constitution cited by Articles and Sections; Revisions and Compilations of Statutes cited by Section numbers; and the Session Laws cited by Chapter numbers. The pages listed show where an opinion will be found touching on the particular Section and Article of the Constitution and the particular Section or Chapter number of the Statute Construed or Cited.

CONSTITUTION OF 1885.

	Page
Declaration of Rights Section 10	512, 513
Declaration of Rights Section 12	620
Article III. Section 5	507, 614
Article III. Section 10	511
Article III. Section 27	415
Article III. Section 32	511
Article IV. Section 6	68
Article IV. Section 7	265, 624, 627
Article IV. Section 15	518, 601, 602
Article IV. Section 17	605
Article IV. Section 20	605
Article IV. Section 24	107, 289
Article V. Section 8	515, 516
Article V. Section 15	265
Article V. Section 17	447
Article V. Section 28	520
Article V. Section 31	518
Article V. Section 42	518
Article VI. Section 1	542
Article VI. Section 4	346, 542
Article VI. Section 5	346, 358
Article VIII. Section 3	175
Article VIII. Section 5	215
Article VIII. Section 6	259, 418
Article VIII. Section 7	195
Article IX. Section 1	88, 96, 103, 127
Article IX. Section 4	135, 614
Article IX. Section 7	95
Article IX. Section 9	90, 99, 100
Article IX. Section 10	537, 538
Article IX. Section 12	89, 90, 97
Article IX. Section 13	64

	Page
Article IX. Section 19	93
Article X. Section 7	91
Article X. Amended 1934	542
Article XI. Section 3	369
Article XII. Section 3	161, 413, 414
Article XII. Section 6	229
Article XII. Section 8	147
Article XII. Section 9	130, 417
Article XII. Section 10	423
Article XII. Section 11	403
Article XII. Section 17	128
Article XIV. Section 11	67
Article XVI. Section 14	265
Article XVI. Section 15	268, 582, 610, 614
Article XVI. Section 16	88
Article XVI. Section 29	620
Article XVII. Section 10	403
Article XVIII. Section 6	265
Article XVIII. Section 14	265
Article XIX. Section 1	316, 318, 324, 326, 338
Article XIX. Section 2	326
Article XIX. Section 3	326
Article XIX. Amended 1934	372

COMPILED LAWS OF 1914

Chapter 596L	328
--------------------	-----

REVISED GENERAL STATUTES OF 1920

Section 265	365
Section 738	128
Section 1218	321
Section 1219	320, 321
Section 1222	321
Section 1236	501
Section 3084	254
Section 3189	544
Section 3695	521
Section 3724	521
Section 4127	305
Section 4146	300
Section 4162	300

COMPILED GENERAL LAWS OF FLORIDA OF 1927

Section 65	498
Section 103	636
Section 142	245, 444
Section 162	257
Section 173	277, 279, 285
Section 174	279, 280
Section 175 (1932 Supplement)	161, 163

	Page
Section 176 (1932 Supplement)	161, 163
Section 177	285
Section 178	277, 285
Section 183	423
Section 230	601, 602
Section 248	326, 345, 346, 349, 351, 356, 358, 542, 545
Section 254	365
Section 263	347, 350, 371
Section 284	348, 349
Section 287	354
Section 293	352
Section 297	351
Section 298	326
Section 302	326
Section 306	351
Section 310	344
Section 312	363, 365
Section 318	343
Section 343	319
Section 344	319
Section 347	360
Section 348	319, 371
Section 352	319
Section 357	356
Section 361	360
Section 366	355
Section 369	355
Section 373	359
Section 377	356, 358
Section 379	352
Section 429	351
Section 438	351
Section 458	346, 542
Section 460(1) (34 Supplement)	628
Section 461	346
Section 464	515
Section 472	199
Section 475	208
Section 476	208
Section 486	628
Section 488	628
Section 490	588
Section 507	128, 129, 130, 238, 239
Section 556	401
Section 561	419, 425, 427, 431
Section 562	419
Section 566	424
Section 569	406
Section 581	417, 418, 419

	Page
Section 582	419
Section 583	419
Section 597	97
Section 606	419
Section 669	399
Section 684	430
Section 688	415
Section 701	405
Section 703	411
Section 708	413
Section 709(1) (34 Supplement)	409, 423
Section 710	402, 410, 412
Section 716	423
Section 717	404, 414
Section 720	409
Section 736	406, 407, 408
Section 748	405
Section 755	162, 414, 423, 424
Section 778	466
Section 813	64
Section 889	229
Section 894 (34 Supplement)	94, 105, 114, 117, 126
Section 896	64, 105, 126
Section 897	88, 90, 91, 93, 96, 99, 100, 231
Section 907	58
Section 909	147
Section 910	356
Section 913	226
Section 917	230
Section 919	127
Section 920	87, 139
Section 921	208
Section 923	221
Section 924	82, 122
Section 929	231, 115
Section 931	140, 231
Section 932	231
Section 934	141
Section 942 (34 Supplement)	64
Section 946	128, 129
Section 947	145
Section 951	208
Section 952	116
Section 955	215
Section 958	215
Section 960	8, 142, 459
Section 968	104, 125, 142
Section 969	135, 136
Section 970	233, 234

	Page
Section 976	242
Section 984 (32 Supplement)	108, 227
Section 985 (32 Supplement)	108, 111, 118
Section 994 (32 Supplement)	108
Section 997	108, 122, 145, 146
Section 1000	120
Section 1001	120
Section 1002	120
Section 1003	114, 115, 247
Section 1007	117
Section 1008	117
Section 1009	116, 117
Section 1028	226, 227, 231
Section 1029(2) (34 Supplement)	221, 224, 226
Section 1031	225
Section 1033	221, 233, 235, 236
Section 1034	233, 235
Section 1038	116
Section 1050	15, 21
Section 1053	22
Section 1054	21, 24
Section 1055	16
Section 1067	6
Section 1078	36
Section 1080	12, 13, 27, 32
Section 1088	20
Section 1089	469
Section 1094	22
Section 1130	5
Section 1141	98
Section 1151	15
Section 1167 (32 Supplement)	71
Section 1178	35
Section 1182	19, 469
Section 1183	7
Section 1184	6, 7
Section 1210	8, 9
Section 1213	19
Section 1222	36
Section 1224	13
Section 1227	12
Section 1238	8
Section 1244	27, 32
Section 1245	34
Section 1262	23
Section 1279(6) (34 Supplement)	7
Section 1279(75) (34 Supplement)	12
Section 1281	65, 66, 583
Section 1284	67, 68

	Page
Section 1285	68
Section 1296	566
Section 1304	382
Section 1313	439
Section 1318	566
Section 1320	425
Section 1332	382
Section 1336	3
Section 1345	198
Section 1346	198
Section 1347	198
Section 1348	252
Section 1363(1) (32 Supplement)	447
Section 1365	445, 637
Section 1391	608
Section 1392	608
Section 1446(13) (34 Supplement)	607, 608, 609
Section 1530(6) (34 Supplement)	642
Section 1598	80
Section 1634	616
Section 1639	615
Section 1644	389
Section 1691(9) (34 Supplement)	642
Section 1703	392
Section 1774	635
Section 1794	501
Section 1803	581
Section 1827	3, 26, 502
Section 1861	505
Section 1866	502
Section 1871	608
Section 1990	208
Section 2015	95
Section 2070	95, 356
Section 2098	587
Section 2102(1) (34 Supplement)	587
Section 2103	585
Section 2111	229
Section 2150	214
Section 2151	214
Section 2153	212, 213, 218, 491, 549
Section 2155	210
Section 2196	217
Section 2204	212
Section 2276(19) (34 Supplement)	194
Section 2286	620
Section 2295	418, 419
Section 2301	419
Section 2302	157

	Page
Section 2306	200
Section 2308	157
Section 2384	549
Section 2404	277, 293, 294
Section 2405	287, 415, 194
Section 2408	128, 129
Section 2416	241
Section 2417	241
Section 2419	217
Section 2453	118, 245
Section 2470 (32 Supplement)	154
Section 2693	219
Section 2715	463
Section 2727	463
Section 2752	570, 639
Section 2827	199, 212, 218, 259
Section 2838	259, 260, 267
Section 2865	250
Section 2866	215
Section 2936	6
Section 2946	350
Section 3089	536
Section 3101	634
Section 3112	634
Section 3172	383
Section 3257	561
Section 3283	439
Section 3324	642
Section 3325	642
Section 3331	458
Section 3397(2-32) (1934 Supplement)	435
Section 3408	460
Section 3474	463
Section 3497	453
Section 3505	453
Section 3516	452
Section 3518	452
Section 3521	453
Section 3528	438
Section 3529	438
Section 3641	606
Section 3653	606
Section 3690	194
Section 3693	195
Section 3712	632
Section 3812	564
Section 3881	629
Section 3882	629
Section 3909	629

	Page
Section 3944	640
Section 3945	640
Section 3946	640
Section 3965	76
Section 3977	567
Section 3978	565, 568
Section 3984	382
Section 3985	382, 565
Section 3999	578
Section 4016	600
Section 4131	462
Section 4133	462
Section 4162	288
Section 4257	554
Section 4258	554
Section 4259	554
Section 4270	554
Section 4322	142
Section 4348	515
Section 4355	307, 488
Section 4473	525
Section 4474	525
Section 4479	513
Section 4481	392
Section 4485	513
Section 4488	524
Section 4489	524
Section 4492	524
Section 4588	260, 261, 263
Section 4591	261
Section 4592	264, 272
Section 4594	273
Section 4641	489
Section 4668	138
Section 4741	513, 514
Section 4744	520
Section 4748	198, 241
Section 4749	198, 241
Section 4750	198, 241
Section 4752	198, 241
Section 4753	198, 241
Section 4767	241
Section 4851	252
Section 4853	249
Section 4867	247, 251
Section 4873	490
Section 4879	490
Section 4901	138
Section 5200	254

	Page
Section 5237	254, 256
Section 5510	145
Section 5511	145
Section 5977(6) (34 Supplement)	554
Section 5981	552
Section 6059	299, 308
Section 6079	277, 279, 280, 284, 286, 488
Section 6102 (32 Supplement)	277, 281, 293, 296
Section 6104 (34 Supplement)	282
Section 6108 (34 Supplement)	293
Section 6124 (34 Supplement)	552
Section 6127	552
Section 6128 (34 Supplement)	303
Section 6131	308
Section 6145	308, 552
Section 6161	533
Section 6183(5) (34 Supplement)	534
Section 6204	470
Section 6213	475
Section 6216	475
Section 6224	472, 475
Section 6242	472, 473, 482
Section 6246	478
Section 6263	471
Section 6264	471
Section 6290	479
Section 6292	488
Section 6294	486
Section 6302	479
Section 6303	470
Section 6308	479
Section 6385	555
Section 6390	555
Section 6391	470
Section 6401	470
Section 6402	470
Section 6465	627
Section 6495	97
Section 6503	553
Section 6508	97
Section 6516	12, 13, 32
Section 6522	12, 13, 32
Section 6526	12, 32
Section 6570	297
Section 6932 (4846) (34 Supplement)	557
Section 6932	558
Section 6934	558
Section 6935	558
Section 6960	216

	Page
Section 7068	613
Section 7069	613
Section 7103	437
Section 7105	437
Section 7188 (34 Supplement)	633
Section 7202	628
Section 7392	520
Section 7397	84, 85, 103, 520
Section 7398	84, 85, 103, 520
Section 7399	520
Section 7466	353
Section 7522	273
Section 7523	266
Section 7601	315
Section 7603	315
Section 7605	322, 337, 338
Section 7606	322, 337, 338, 339
Section 7607	322, 338, 339
Section 7614	314
Section 7664	597
Section 7665	597
Section 7669	631
Section 7765	270
Section 7962	303
Section 8086	499
Section 8087	502
Section 8132	567, 568
Section 8179	359
Section 8209	251
Section 8292	268
Section 8318	514
Section 8325	256
Section 8333	263, 514
Section 8334	266
Section 8339	263
Section 8341	514
Section 8347	261
Section 8356	212, 218
Section 8425	263
Section 8426	485
Section 8427	485, 487
Section 8435	263, 265
Section 8443	263
Section 8488	255, 273
Section 8490	255
Section 8519	269, 270
Section 8521	270
Section 8533	549
Section 8557	486

ACTS OF 1907

	Page
Section 8577	549
Section 8580	550
Section 8582	549
Section 8584	550
Section 8585	550
Section 8613 (34 Supplement)	549
Section 8615	229, 383, 390, 638, 639
Section 8649	260

SESSION LAWS

ACTS OF 1885

Chapter 3662	89
--------------------	----

ACTS OF 1889

Chapter 3839	438
Chapter 3872	130

ACTS OF 1891

Chapter 4010	110
Chapter 4011	110
Chapter 5452	561
Chapter 5596	128, 221, 328
Chapter 5597	327
Chapter 5729	633

ACTS OF 1913

Chapter 6421	325, 328, 329
Chapter 6491	453

ACTS OF 1915

Chapter 6932	128
Chapter 6970	470

ACTS OF 1917

Chapter 7283	323
Chapter 7284	329
Chapter 7285	327
Chapter 7290	320
Chapter 7384	555
Chapter 7600	503

ACTS OF 1919

Chapter 7806	109, 121
Chapter 7831	452, 453

ACTS OF 1921.

Chapter 8548	85
--------------------	----

ACTS OF 1923

Chapter 9126	546, 547
Chapter 9157	567
Chapter 9201	457, 458
Chapter 9203	483

	Page
Chapter 9270	199
Chapter 9283	521
Chapter 9312	615, 616

ACTS OF 1925

Chapter 10028	533
Chapter 10120	24
Chapter 10123	502, 505
Chapter 10177	97, 384, 598
Chapter 10186	425, 566
Chapter 10437	627
Chapter 11369	381

ACTS OF 1927

Chapter 11829	554
Chapter 11841	386
Chapter 11849	24, 290
Chapter 11865	533
Chapter 11870	627
Chapter 11925	255
Chapter 11945	224
Chapter 11954	198, 199
Chapter 12026	80
Chapter 12104	138
Chapter 12110	25
Chapter 12197	464
Chapter 12279	601
Chapter 12291	465
Chapter 12295	445, 446
Chapter 12562	83, 625

ACTS OF 1929

Chapter 13576	288, 289, 305, 306, 308, 488
Chapter 13590	207
Chapter 13616	503
Chapter 13630	394
Chapter 13634	80
Chapter 13644	17, 20, 28, 495, 496, 501, 504
Chapter 13663	26, 472
Chapter 13670	604
Chapter 13757	436, 437, 438
Chapter 13761	356, 361, 362, 363, 364
Chapter 13810	449, 563, 569, 617
Chapter 13874	98
Chapter 13876	25, 101
Chapter 13940	83, 84, 625
Chapter 14483	379
Chapter 14486	76, 77, 154, 158, 159, 161, 162, 164, 165, 169, 171, 172, 176
	180, 181, 182, 187, 190, 225, 227, 384
Chapter 14491	16, 18, 19, 20, 24, 597

	Page
Chapter 14508	80
Chapter 14511	505
Chapter 14523	559
Chapter 14530	502
Chapter 14545	502
Chapter 14552	425
Chapter 14572	114, 118, 120, 132, 133, 138, 141, 247
Chapter 14574	64
Chapter 14579	588
Chapter 14642	622
Chapter 14643	619, 621
Chapter 14650	36, 454
Chapter 14653	485
Chapter 14657	290, 345, 347, 363, 364, 365, 366
Chapter 14669	195
Chapter 14672	304
Chapter 14675	555
Chapter 14677	97, 149, 555
Chapter 14681	209
Chapter 14717	106
Chapter 14723	80, 95
Chapter 14735	537
Chapter 14739	384
Chapter 14741	26, 472
Chapter 14749	523, 524
Chapter 14762	35
Chapter 14764	69, 384, 566, 567
Chapter 14778	456
Chapter 14829	427
Chapter 14830	138
Chapter 14831	633
Chapter 14832	4, 14, 25, 33, 370, 371, 421, 440, 441, 443, 444, 445, 446, 447, 448
Chapter 14842	440
Chapter 14899	280, 321, 385, 480, 551, 590, 591, 592, 593, 596
Chapter 14906	435
Chapter 15040	27
Chapter 15041	134, 135
Chapter 15048	228
Chapter 15050	119
Chapter 15107	84, 624, 625
Chapter 15605	529
Chapter 15625	67, 68, 69, 382
Chapter 15629	193, 371
Chapter 15630	353
Chapter 15634	235, 236
Chapter 15642	608
Chapter 15659	76, 77, 78, 384
Chapter 15663	225

	Page
Chapter 15680	42
Chapter 15702	413
Chapter 15719 379, 380, 381, 386, 387, 388, 389, 394, 457, 458, 613	613
Chapter 15720	602, 615
Chapter 15724	627
Chapter 15726	97, 554, 555
Chapter 15751	95
Chapter 15772	187, 189
Chapter 15779	130, 424
Chapter 15787 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 384	384
Chapter 15789 51, 52, 225, 226, 235	235
Chapter 15794	224
Chapter 15798	233

ACTS OF 1933

Chapter 15858 382, 383, 384, 385, 386, 389, 390, 391, 392, 393, 394, 507	507
	633, 638
Chapter 15859	23, 444, 602
Chapter 15860	461
Chapter 15861	626
Chapter 15863	314
Chapter 15871	619, 622
Chapter 15872	291
Chapter 15873	305, 306
Chapter 15874	304
Chapter 15875	281
Chapter 15877 293, 295, 298, 306	306
Chapter 15879 291, 293, 300	300
Chapter 15884 21, 23, 29, 30, 31, 34, 35, 36, 316, 322, 324, 327, 330	330
	331, 332, 333
Chapter 15885	471
Chapter 15888	177
Chapter 15890	177
Chapter 15891 75, 153, 154, 155, 156, 158, 159, 162, 170, 181, 217	217
Chapter 15906	166
Chapter 15907	176
Chapter 15908 529, 530, 531, 532, 534	534
Chapter 15909	627
Chapter 15910	627
Chapter 15911	461, 464
Chapter 15918 118, 119, 245	245
Chapter 15938 147, 149, 202, 203, 204	204
Chapter 15947	215
Chapter 15963	255
Chapter 15979	197, 198
Chapter 15984 215, 251	251
Chapter 15996	488
Chapter 16015 61, 62, 254	254
Chapter 16042 20, 384, 387, 449, 450	450

	Page
Chapter 16047	10, 11, 560
Chapter 16053	515
Chapter 16058	240
Chapter 16066	631
Chapter 16067	558
Chapter 16072	17
Chapter 16078	35, 560, 561, 563
Chapter 16079	242
Chapter 16082	63
Chapter 16083	73
Chapter 16085	9, 10, 66, 583, 617
Chapter 16087	435
Chapter 16088	571, 573, 574, 575, 576, 578, 579, 580
Chapter 16090	108
Chapter 16103	521, 522
Chapter 16113	440, 443, 444, 446
Chapter 16114	421, 422
Chapter 16151	585
Chapter 16170	147, 149, 398, 409, 420, 427
Chapter 16171	131, 420, 422, 427
Chapter 16174	280, 281
Chapter 16178	495, 496, 499, 500, 507, 508
Chapter 16179	226, 383
Chapter 16180	351, 366, 367
Chapter 16181	546, 547, 548, 615
Chapter 16183	402, 420, 575
Chapter 16184	438, 440, 611, 612, 616, 617
Chapter 16185	603
Chapter 16236	430
Chapter 16240	486
Chapter 16245	538
Chapter 16248	481
Chapter 16252	80, 81, 82, 83, 84, 85, 103, 108, 121, 146, 154, 176 186, 244
Chapter 16253	117
Chapter 16286	201
Chapter 16287	229, 391
Chapter 16288	106
Chapter 16297	98
Chapter 16299	9, 16
Chapter 16482	102, 103
Chapter 16620	352
Chapter 16621	537
Chapter 16733	488